University of Alberta

The Radical Promise of Public Legal Education in Canada

by

Lois Elaine Gander ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment
of the requirements for the degree of Master of Laws

Faculty of Law

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Lois E. Gander.

11219-54 Avenue
Edmonton, AB T6H 0V5

September 24, 1999

University of Alberta

Faculty of Graduate Studies and Research

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitle *The Radical Promise of Public Legal Education in Canada* submitted by Lois Elaine Gander in partial fulfillment of the requirements for the degree of Master of Laws.

Professor CRB Dunlop

Dr LK Penrod

Linda Reif

Professor LC Reif

September 23, 1999

Abstract

Public legal education (PLE) emerged in Canada as an aspect of the legal services movement in the 1960s. This thesis traces the roots of PLE to the American War on Poverty and examines the early years of PLE through the prism of the new social reform paradigm that dominated that experience. The examination shows that while PLE shared the social justice goals of the period, when the new approach to reform was applied to innovative legal services it was adapted in ways that compromised the ability of PLE to achieve radical ends. The thesis concludes that recovering the radical promise of PLE requires overcoming the constraints inherent in the positivist concept of law that prompted those adaptations. Doing so would enable public legal education to play a more significant role in promoting access to justice rather than just access to law.

Preface

My involvement in public legal education (PLE) began in 1969, when, as a member of the first year law class at the University of Alberta, I participated in organizing Student Legal Services (SLS), a student-based legal aid service for the inner-city community of Boyle Street in Edmonton. Although I did my part in providing direct legal services to our clients, my passion became educating people about the law - whether by hanging out with ex-convicts at the Native Brotherhood office, providing back-up support to the staff of a drop-in centre for youth, or speaking to high school law classes.

These were the sixties and PLE had the thrill of being subversive. Legal knowledge was the guarded privilege of a select few. Sharing it with the masses was highly suspect. In fact my own access to that knowledge was by no means assured. I was at the front end of the surge of women demanding admission to the legal profession and the reception we received was less than whole-hearted welcome. Not that we made our presence easy to ignore. In one way or another, and not always on purpose, we seemed to challenge the *status quo*. Although PLE was not a feminist project, women played key roles in initiating many of the first PLE programs in Canada. Yet we are largely absent from the formal record. Men occupied the key positions in the legal institutions that mattered at the time and when it was trendy to be associated with PLE, they tended to step up to the podiums to speak for this emerging field of endeavour. Unfortunately, the women who came to define the practice of PLE have not written much about their work and I regret that their voices are not more present in my thesis. Much work remains to be done to capture that knowledge and make it available. The absence of a record of their thoughts is also a reflection of the subversiveness that shrouded PLE. To some extent, the less that was known about what was going on, the better. It should not be surprising that the first people to take this work seriously were people whose presence in legal institutions was in itself destabilizing.

In my third year of law school, I became the chair of the SLS steering committee and was responsible for handling the transition of SLS from a faculty-supported project to an independent organization. After a year of articles and another year of practice, I returned to SLS as its community advisor. My role was to support the involvement of students in community organizing and educational activities. As I indicate in this thesis, by the time I took up this position, the interest of students in radical action had already peaked and it was becoming increasingly difficult to carry out any long term community education or social reform activities. Since SLS was a student-based organization, it responded to students' changing interests and was constrained by their other commitments.

My account of the history of PLE is heavily influenced by these experiences. Like others, I was radicalized by my experience in being part of the legal services movement and marked indelibly by images of the harshness of the existence of Canada's forgotten poor. The sixties may have been doomed, but like many others, it was a defining time in my life.

With the formation of the Alberta Law Foundation in 1972, it became possible for me to take public legal education more seriously. At a meeting to discuss their interest, the Foundation invited me to submit a proposal for a more concerted approach to addressing the PLE needs of Albertans. With the aid of a small group of interested teachers, lawyers, and community representatives, I submitted a proposal to create a legal resource centre which would develop and provide a range of public legal education services. In 1975, the Foundation began supporting this project and I left SLS to become the director of the new service, a post I occupied as a member of the Faculty of Extension at the University of Alberta which had agreed to take on responsibility for operating the project during its initial phase. In time, arrangements were made for the Faculty to assume continuing responsibility for the Legal Resource Centre. Over the next ten years or so, the Foundation generously supported our work and we were able to play a leadership role in developing and delivering innovative legal education services to teachers, librarians, community leaders, youth, and other individuals with an interest in law.

By the mid 1980s, the Foundation's own income had decreased significantly and it began what would become a series of reductions in its core funding of the Legal Resource Centre and of other public legal education services in the province. In response to its changing fortunes, the Legal Resource Centre became transformed into the Legal Studies Program of the Faculty of Extension and our activities became increasingly focused on using internet technology to extend our reach into the community. The Legal Studies Program is currently responsible for ACJ*Net*, a national internet-based legal education service and L*aw*N*ow*, a magazine and web-based service that not only provides current information about the law, but uses the lens of the law as a way of analyzing current social issues. The Legal Studies Program also undertakes special projects and carries out research on the theory and practice of public legal education.

Throughout the thirty years or so of my involvement in public legal education, I have been both excited by the possibilities of the field, and frustrated by its apparent lack of real impact. In the infrequent times in which I have been able to reflect seriously on that apparent contradiction, I have concluded that what is lacking in PLE is any real body of knowledge about what we do and why we do it. Most of what is written has been compiled by "outsiders;" little by those of us who have developed the field through our thoughts and action. We need to articulate our understandings and subject them to rigourous analysis if we are to move forward. In particular, I think we must better ground PLE theoretically. If we can do so, we will not only enrich our own understanding of our work but also contribute to the body of knowledge of a variety of disciplines.

This is not an easy task. Few of us in PLE have time for such reflection and, being action-oriented, we may feel little inclination to submit to the discipline of writing. Those of us who have that privilege and responsibility must still face the daunting prospect of reliving parts of our lives that we might wish to let rest. That was the case for me. When I began this project in 1991, I was exhausted from dealing with a series of particularly demanding personal and professional challenges and was casting about for new sources of inspiration to guide the next phase of my PLE work. I had happened upon a few articles written by critical legal theorists and was intrigued by the kind of analysis they were doing. It seemed that they were pursuing at an academic level what I associated with the radical aspects of public legal education. I wanted the opportunity to pursue that theoretical work and to become familiar with the emerging body of feminist analysis of the law. What I definitely did not want to do was dwell on the past. As this thesis proves, it did not turn out that way. To discuss the implications for PLE of emerging critical theories, I first had to provide some account of PLE. With the benefit of at least a rudimentary grasp of what the critical theorists were up to, stepping back into the past proved more fruitful than I anticipated. I now saw in the history of PLE impediments to realizing its vision that had previously eluded me. I saw more clearly both what PLE started out to do and how it quickly became constrained in doing it, not just by practical and political realities, but by conceptual shortcomings. Before I could get on to the work I had originally set for myself, I had to come to terms with the theoretical conundrum that PLE already faced. I do not complete that task here; I only identify it.

Revisiting the early years of PLE meant reliving many of the highlights of the period. The sixties were a special time as those of us who had the privilege of experiencing them well know and as those who did not, get tired of hearing. It is difficult to convey the sense of the moment for it was deeply personal as well as social; fortunately that is not my purpose here. Others have taken on that challenge. For now, I only want to honor those who did not survive to see how the story would turn out. In particular, I would like to thank Warren, Tony, Johnny, and Sandra for having shared their hopes and dreams with me and for daring me to follow a path with heart.

Completing this thesis required considerable support on the part of many. I would like to thank Dr. Richard Bauman for introducing me to the field of legal theory and launching me on my inquiry. I would like to thank Professor CRB Dunlop for picking up the task these many years later and seeing this project through to completion. I am indebted to them both for their guidance. Undertaking this project meant many months away from the office and my somewhat distracted presence during others. Most sincere thanks to San San Sy, associate director of the Legal Studies Program and my companion on this PLE journey for almost 25 years. I could not have undertaken this project without her support and willing assumption of the extra burdens of covering for my absence. I could not have a better partner. Others at the Legal Studies Program have also had to endure much as a result of this project and I thank all of them for their patience and and perseverence in making the impossible happen. I would also like to thank others in the field of public legal education, especially Meg Richeson, Gail Dykstra, Carol MacEown, and Penny Bain, who have challenged my thinking throughout my career and have provided most welcomed friendship.

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Chapter 1 - Introduction

The 1960s was a decade marked by idealism and naïveté, agitation and protest, rebellion and violence. It was a time when basic assumptions about life in the western world were called into question and found wanting. In North America, one of the responses to this turmoil was the formulation of a new method of social reform, a process that called for the direct involvement of the people who had the most to lose by perpetuating the *status quo* and the most to gain by changing it. The new paradigm of social reform did not spring full-blown from some high-powered think tank, but emerged from the interplay of ideas and experiences of leaders in academic, philanthropic, professional, labour, and government circles and of activists involved in eradicating poverty. Theirs was a process of reform characterized by an impatient demand for radical action.

Never fully articulated as a model, the new approach to social reform took hold during the American War on Poverty. It quickly spread across the border into Canada where it was picked up and modified to suit Canadian attitudes and aptitudes. One of the legacies of its applications in this country was a form of innovative legal service which has come to be known as ‘public legal education” (PLE).[1] When it was first proposed, PLE attracted considerable controversy. Lawyers responded defensively to this attack on their virtual monopoly on legal information. Promoters of PLE were not deterred; theirs was a noble cause. As part of the broader social reform movement, PLE could empower the public to use the law to rid the country of injustice, including the greatest injustice of all – poverty.

In the intervening years, PLE has become an established, if under-funded, aspect of the administration of justice in this country.[2] It is clear, even to the casual observer, that PLE and its allies have not succeeded in their campaign to democratize law or abolish injustice. Indeed, PLE has moved back from its more radical claims and may have even been coopted to play apologist for the legal system.[3] The reasons for this retreat are buried in the 25 years or so of PLE's history, but the radical claims of PLE were not buried along side and remain to be addressed. Could more be done through PLE to expose social injustice, to fight evil, and to empower the oppressed?

The purpose of this thesis is to reawaken interest in the radical potential of PLE and to begin to consider what must be done to give PLE a critical edge. The object of this study is PLE's formative first few years when its radical ambitions were set and its practices largely delineated. PLE did not come into being as a well thought-out strategy for achieving clearly articulated goals so much as an ill-defined by-product of a political project that was riddled with confusion, contradiction, and conflict – ample reason for PLE to have faltered in advancing its most difficult objectives. It is to the credit of those who saw the multiplicity of uses to which PLE could be put, that the field has flourished in Canada as well as it has.

To move forward as a force for social justice, PLE must address this heritage. With the benefit of hindsight it is possible to see more clearly the essential elements of the social reform paradigm that gave rise to PLE and the problems PLE continues to experience as a result of having deviated from the model. This in turn exposes a contradiction that lies between PLE's radical objectives and the very concept of law that PLE relies on in its practice. If PLE can address that contradiction, it will overcome a fundamental impediment to engaging the public in any meaningful involvement in the law. The very nature of that project will be transformed. Since that contradiction goes to the heart of the western concept of law, addressing that issue would have the added benefit of advancing the understanding of the theory of law that undergirds the current legal regime.

TRADITIONAL UNDERSTANDINGS OF PUBLIC LEGAL EDUCATION

At first blush, the contemporary call for more public education about the law might be dismissed as being neither new nor profound. Law cannot perform any function unless there is some public awareness of its existence. In English law, this requirement has been formalized in a principle of natural justice that provides that statutes are enforceable only if they have been published. A reciprocal, though more limited, burden is imposed on the individual through the maxim that ignorance of the law is no excuse for committing a crime. In a formal sense, public legal education is implied by the concept of law itself.

To satisfy the inherent social imperative, laws have been promulgated in various forms since earliest times. As societies have progressed, so too have their means of publishing their laws. The ultimate standard for this activity has been provided by Jeremy Bentham who argued that legislation should cover the "whole field of human action" and be crafted with a sufficient "degree of perfection" as to method, regularity, and consistency that

> a man need but open the book in order to inform himself what the aspect borne by the law bears to every imaginable act that can come within the possible sphere of human agency....[4]

Ahead of his time by some 200 years, Bentham recognized both the public's need to know about the full range of the law and the value of drafting laws in plain language so they would be accessible – two insights that remain linked and that are finally being taken at least somewhat seriously in Canada today. Still, for better or worse, Bentham's challenge has not been met and the public has no comprehensive book of laws to guide their behaviour.

In the absence of a comprehensive, authoritative, and readable statement of the law, other *ad hoc* means have been devised to provide the public with the legal information they need. In recent decades in Canada, police forces, libraries, school systems, government departments, the media, and even commercial publishers have responded to public demand for information about the law. In a study for the Law Reform Commission of Canada, Dean M. L. Friedland noted the wide range of sources the public turned to for legal information, including "the clergy, doctors, employers, trade union officials, the staffs of social service organizations, and family members."[5] High schools, business colleges, and universities across the country also offered basic commercial law courses to their students. Public legal education of this sort reflects the practical need for information that arises in the ordinary interaction between individuals and the legal system, and the more abstract need of the system itself for informed public support. In a free and democratic society, that would hardly be considered as revolutionary.

THE EMERGENCE OF CONTEMPORARY PLE SERVICES IN CANADA

In the late 1960s, public legal education took on a new urgency. A broadly based demand for legal information was provoked by the social upheaval which characterized the times.[6] 'Ban-the bomb' marches led to the need to know how far the police could go in interfering with protests. Hippies hitch-hiking across Canada encountered the long arm of the drug and vagrancy laws, creating a demand for information about the laws of arrest and seizure. Americans dodging the draft for the war in Vietnam hid in the basements of church-going and otherwise law-abiding

Canadians, causing them to wonder to what legal risks they might be exposing themselves. Radical students protesting the seeming irrelevancy of their education wanted information on the law regarding causing a disturbance and public mischief. In seeking liberation, women demanded information on birth control, illegal at the time, and organized for fairer divorce laws. Prime Minister Trudeau's 1968 promise of a "Just Society"[7] both reflected and abetted the public clamour to have injustices redressed.[8]

A few concerned individuals and agencies began to respond not only to the need for legal information and assistance but also to the challenge of using the law to remedy social injustice. Several of the country's law schools initiated innovative student legal aid programs to address the needs of the poor and other disadvantaged sectors of their communities. A range of clinical services and 'preventive law' or 'community legal education' activities were incorporated into those programs which often had as their goal eliminating the root causes of social problems, like poverty, and fundamentally altering the way power is exercised in this country. PLE along with other clinic strategies were to empower the poor to stand up for their rights and to make the law work **for** them and **against** the interests of powerful landlords, welfare bureaucracies, and even the legal establishment itself, instead of the other way around. These bold, new legal services would help the dispossessed eliminate the very causes of their oppression.

In the parlance of the day, PLE was considered 'radical.' The term was in common usage in the sixties, but its meaning was never fixed. Loosely speaking, a radical project was one that went to the root causes of a problem and sought to ferret them out. While radicals were often disparaged in the community, radicals themselves wore the label as a badge of honour connoting their commitment to act on the social problems they identified. To Saul Alinsky, foremost radical of them all, a radical was an irreverent "political relativist" who constantly searched for the causes of man's plight and for explanations of his irrational world but who was never satisfied with his own findings. His radical was not normless. He was solidly grounded in a belief that "if people have the power to act, in the long run they will, most of the time, reach the right decisions." A radical matched this fundamental belief in people with an understanding that democracy was the best means of pursuing "equality, justice, freedom, peace, and a deep concern for the preciousness of human life."[9] Radical projects were conceived and undertaken in this spirit.

THE RADICAL PROMISE OF CONTEMPORARY PUBLIC LEGAL EDUCATION

It is the radical promise of PLE that makes its rebirth in the sixties worth examining. PLE pledged to effectively engage the public in using the law proactively for social justice. The appreciation of the radical political potential of PLE became apparent as lawyers, law students, and other activists who were engaged in social justice causes during the 1960s and 1970s explored the role law plays as an agent of social policy. In their work, they exposed the way the law creates, legitimizes, and reinforces relationships between the state and its citizens, between classes, and among individuals. They demonstrated that law is not benign in its effect on these social arrangements. It is neither a passive by-product of social decisions, nor a neutral arbiter of disputes. Legal activists charged that traditional understandings of law block an appreciation of the role law plays in advancing the interests of the powerful at the expense of the powerless.[10] In conferring benefits on some and concealing disadvantages to others, law is deeply implicated in the conditions of social life. Activists worked to expose and purge law's biases and to use law as the "dynamic of change"[11] in their relentless pursuit of social justice.

> The problem of remedying bias in the law shades into the problem of remedying poverty itself. Effecting *legal* equality becomes at some point a problem of effecting *social* equality.[12]

As they saw it, lawyers could and must do something about social conditions if the integrity of the legal system as an agent of justice is to be preserved.

With the new and radical mandate for law came the realization that public involvement in legal matters is necessary if the law is to reflect the needs of everyone, not just a privileged group. That democratization of law called forth the radical's belief in people, but that belief was hedged with the proviso that the public would first need to become more legally competent and capable of holding authorities accountable.[13] To create that level of knowledge and assertiveness, a broad program of public legal education was needed. As Patti Pearcy of the Vancouver Peoples' Law School put it, "Public Legal Education has the potential to turn the myth of 'participatory democracy' into a reality."[14] Public legal education promised to make real the Canadian Bar Association's 1984 Law Day claim that "The Law Belongs to You."[15]

PUBLIC LEGAL EDUCATION IN CANADA TODAY

In the thirty or so years since law schools first responded to the need for innovative use of the law for social purposes, much has changed in public legal education. The extensive and diverse demands for PLE soon outstripped the interests and capacities of the law schools and their students. To meet that continuing demand, agencies that had PLE as their sole mandate began to be set up across the country.[16] Social justice agencies also began adopting PLE strategies.[17] Taken together, these initiatives have resulted in a loose network of agencies[18] that dedicate resources to educating the public about the law. Governments now legislate in the area[19] and PLE is supported through both governmental[20] and non-governmental funding.[21]

Contemporary PLE has been used on behalf of a variety of causes ranging from the rights of the disabled[22] to crime prevention[23] and economic development.[24] Almost no issue arises in Canada without a PLE organization at least considering the need to address it. PLE programs provide information about the law, teach people how to access legal resources, train them to undertake law-related activities, and encourage them to become involved in legal affairs.[25] Recognizing that part of the problem the public faces arises from the style in which legislation, legal judgments, and legal documents are expressed, PLE providers also advocate the use of plainer language in legal writing.[26] These diverse efforts combine to produce a multimillion-dollar,[27] nation-wide enterprise[28] that enables Canadians to learn more about virtually any aspect of the law through a variety of formats and at varying levels of sophistication.[29] PLE makes access to legal knowledge a realistic expectation for thousands of Canadians.[30]

The benefit of PLE to individuals, legal institutions, and society is generally accepted today, if difficult to prove. But questions remain as to whether PLE has had a substantial impact on the many inequities in our society or on the relationship between the public and the law. Perhaps, as Hans Mohr suggested in 1977, we have been unable to "conceive of a public legal education which can show how people can take the law into their own hands." Could it be that this is still "a form of education for which we are as yet poorly prepared?"[31]

Mohr's point is well taken, or would be if PLE had not tempered its political ambitions in the ensuing years. The rhetoric of participatory democracy is not heard much in PLE circles any more. PLE programs teach people their rights and responsibilities and provide practical legal information and information about the law and the justice system.[32] Programs are designed to increase 'legal literacy'[33] or to train intermediaries to provide information **not** advice. Whatever rhetorical value these phrases may have in attracting funding, they are hardly rallying calls for a revolution. While some PLE providers may still be inspired by the political promise of their work, those aspirations are tempered, and seem to lack the energy and edge they once possessed. They now seem romantic, nostalgic, tired and old-fashioned.

The apparent move away from the political mission of PLE is occurring in stark contrast to the escalating use of law to mediate social disputes. In the aftermath of the passage of the *Canadian Charter of Rights and Freedoms*, law is being used increasingly explicitly to redefine social relationships and to contest major social issues. So, in backing off, or worse, in abandoning its radical mission, PLE has failed to engage the public in a most influential forum of contemporary social debate.

There are, no doubt, many reasons why this might be so. One of them, and the main conclusion of this thesis, is that PLE suffers a fundamental impediment to accomplishing its goal of democratizing the legal system in the pursuit of social justice. PLE has become trapped by the very concept of law it sought to transform.

Examining this proposition is riddled with problems. One of them is that PLE providers have not explicitly articulated or adopted a particular theory of law but rather have drawn from a broad assortment of insights accumulated over the years. PLE providers have tended to engage their inquiry at a practical rather than a theoretical level and to take whatever ground they can gain from time to time. PLE has also had to take on many faces just to ensure its own survival. Nor have PLE providers been above practising the art of the possible as a cover for advancing what they believe to be a more subversive agenda. To explore the state of PLE in Canada, it is necessary to take the field on its own terms and examine its practices to determine how far PLE has advanced in the past thirty years.

PROBLEMS IN DEFINING PUBLIC LEGAL EDUCATION

Extracting insights from the practices of PLE is not a straightforward proposition. So varied are the responses to the challenges of educating the public about the law that generalizations are difficult to make. As Sussman and Morse have observed,

> ...it should be recognized that PLE's growth and expansion have been relatively uncoordinated, as was natural with a largely popular movement springing up to meet a rather suddenly recognized need. There has resulted, on the one hand, almost a hodge-podge of certain kinds of activities, like community education programs geared to a variety of audiences and responding to a variety of needs. On the other hand, other logical and legitimate means of achieving PLE basic objectives ... have been relatively neglected.[34]

There is no simple way to outline who is involved in PLE, its content, processes, products, or even its goal or mission. The task of defining PLE is further encumbered by the lack of analysis and assessment of the experiences and conversations of PLE. As researchers have noted, it is impossible to identify whether PLE is an activity, a discipline, a field, a network, or a social movement.[35] PLE is not derived from a single idea, nor guided by a single vision. The ideas of 'public' 'legal' and 'education' are fluid and are viewed differently at various times and in various contexts.[36] While PLE activities bear a certain family resemblance, their affiliation cannot be declared except provisionally or arbitrarily. So PLE has eluded definition.[37]

Though PLE cannot be defined, it can be described. Again, this is not a straightforward task because the understanding of PLE has been maintained largely through oral tradition and action rather than in written commentary or analysis. To describe PLE, it is necessary to arrive at that understanding through a review of key events, organizations, activities, products, ideas, values, and issues that have shaped or emerged from the PLE experience in Canada, particularly in English-Canada.[38]

This thesis begins the discussion of the history and context of PLE. The review discloses the source of PLE's political ambitions and some of the limitations that were placed on their attainment. It lays out the radical promise of PLE, how it came to be made, and the first forms contemporary PLE took. It identifies some of the issues with which early PLE providers struggled and identifies the source of a fundamental contradiction in PLE that continues to confound its application for radical change. This review provides a useful reference point for reflecting on current issues in PLE as well as reawakens the question of the real promise of PLE as an agent for advancing social justice in Canada.

THE STRUCTURE OF THIS WORK

Chapter 2 traces the roots of contemporary public legal education in Canada to their origins in the War on Poverty carried out in the United States in the early 1960s for that is where PLE first took shape and became implicated in radical events. Chapter 3 looks at the innovative form of legal services developed during the War and Chapter 4 describes the type of public legal education the War spawned. This account of the American experience provides the background for understanding Canada's largely derivative response to its own social unrest in the later 1960s and early 1970s. The Canadian response is outlined in Chapter 5 and Canada's particular handling of the call for more and better legal services is discussed in Chapter 6.

The story of the early years of public legal education is examined through the prism of the new social reform paradigm that emerged out of the experiences of those involved in the War on Poverty. That examination shows that when the new approach to reform was incorporated into the legal services movement, it was adapted in ways that compromised the ability of innovative legal services to achieve their radical ends. Chapter 7 suggests that by repairing the breaches in the model, public legal education can be freed to pursue a host of socially productive purposes, especially its radical project. Doing so requires overcoming impediments caused by the positivist concept of law embedded in current models of PLE. If public legal education succeeds in this reformulation, it will also make a valuable contribution to contemporary lega theory.

Chapter 1 Notes

[1] There are actually two terms commonly used in Canada to described this phenomenon: 'public legal education' (PLE), the term used in this work, and 'public legal education and information' (PLEI). In the United States and Australia the term 'community legal education' refers to similar activity. That term was used briefly in Canada and is reflected in the names of two PLE organizations: the Community Legal Education Association of Manitoba and Community Legal Education Ontario. It was also something of a misnomer for the Community Law Program at the Faculty of Law of the University of Windsor. On the latter point, see R.A. Macdonald, "The Role of the Community" in F.B. Sussmann & B.W. Morse, eds, *Law and the Citizen: Looking to the "80's* (Ottawa: University of Ottawa Press, 1981) 3 at 4.

[2] For a disclussion of similar phenomenon elsewhere, see C.H.S. Jayewardene & T. Peelpola, *Access to Justice, Research Reports on Public Legal Education and Information: International Review of Public Legal Education and Information* (Ottawa: Justice Canada, 1986).

[3] R.A. Macdonald, "Recommisioning Law Reform" (1997) 35 Alta L. Rev. 831 at 866.

[4] J. Bentham, *The Limits of Jurisprudence Defined* (New York: Columbia University Press, 1945) at 343. Though written about 1780, Bentham's book was not published for more than 150 years.

[5] M.L. Friedland, *Access to the Law* (Toronto: Carwsell/Methuen, 1975) at 2.

[6] See D. Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996) especially Chapters 7-11 for a discussion of this period in Canadian social history. See also M. Kostash, *Long Way from Home: the story of the sixties generation in Canada* (Toronto: J. Lorimer, 1980) and G.F. McGuigan, ed., *Student Protest* (Toronto: Methuen, 1968).

[7] An election promise that was confirmed in the Canada, House of Commons *Speech from the Throne* (1968).

[8] C. H. S. Jayewardene and T. Pelpola deny the existence of any such outcry. C.H.S. Jayewardene & T. Peelpola, *supra* note 2 at 11-30.

[99] S.D. Alinsky, *Rules for Radicals* (New York: Random House, Inc., 1972) at 11-12.

[10] See J.E. Carlin, J. Howard & S.L. Messinger, *Civil Justice and the Poor* (New York: Russell Sage Foundation, 1967) for an excellent discussion of the insights into the differential impact of the law and the poor as understood at the time.

[11] A. Chayes, "Foreword" in A. Chayes & R.L. Wald, eds, *Law and Poverty, 1965, Report to the National Conference on Law and Poverty, Washington, D.C. June 23-25, 1965* (Washington: U.S. Government Printing Office, 1965) v at v.

[12] J.E. Carlin, J. Howard & S.L. Messinger, *supra* note 10 at 20.

[13] J.E. Carlin, J. Howard & S.L. Messinger, *supra* note 10 at 61–76.

[14] P. Pearcey, "The Role of the Community" in F.B. Sussmann & B.W. Morse, eds, *Law and the Citizen: Looking to the 80's* (Ottawa: University of Ottawa Press, 1981) 65 at 65.

[15] Canadian Bar Association, Press Release, "Law Day, April 17, Promises Public Hundreds of Events" (April 4, 1986). The Canadian Bar Association's Law Day celebrations have been held every April 17 (or the nearest weekend to that date) since 1983 to commemorate the

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proclamation of the Canadian Charter of Rights and Freedoms. Canadian Bar Association, *Law Day 1983 Reports* (Ottawa: Canadian Bar Association, August 1983).

[16] The first of these was the Vancouver Peoples Law School, incorporated in British Columbia in 1972.

[17] See A. McChesney, *PLEI Provided by Intermediaries: Does Widespread Access Mean "Equal Access"?* (Ottawa: Department of Justice Canada, September 1997) for the state of this today.

[18] These agencies have affiliated nationally as the Public Legal Education Association of Canada. A parallel provincial association exists in the Public Legal Education Network of Alberta. See G.A. Duncan, Dr., "The Network of Public Legal Education" in E.R. Myers, ed., *Legal Education for Canadian Youth* (Saskatchewan: Canadian Law Information Council, 1981) 13 and M. Richeson, "The Practical Aspects of Networking" in *ibid.* at 19.

[19] See J.-F. Boulais, "The Role of Government" in F.B. Sussman & B.W. Morse, *supra* note 14 at 39 for legal aid legislation that included provisions for public legal education. See S. Sawyer, *Dreams of Justice: Community Groups, Legal Education and Social Change in British Columbia* (M. Ed., University of British Columbia, 1993) [unpublished] for a discussion of the *Legal Services Commission Act*, S.B.C. 1975, c. 36.

[20] In 1984, the Department of Justice Canada set up the Access to Legal Information Fund to provide public access to legal information. For a summary of the earlier involvement of the Department, see Department of Justice Canada, "Summary of Public Legal Education Activities 1977 - 1980" in F.B. Sussmann & B.W. Morse, *supra* note 14 at 101.

[21] Chiefly law foundations. See S. Sawyer, *supra* note 19 for a discussion of the role of the Law Foundation of British Columbia.

[22] See S. Sawyer, *supra* note 14.

[23] V.F. Sacco, *Public Legal Education and Information, and Crime Prevention* (Ottawa: Department of Justice Canada, March 1992).

[24] See for example, Phillips, L.M. & Peter Ringrose, *Offshore Oil Development and the Law: A Nontechnical Introduction* (St. John: Public Legal Information Association of Newfoundland, 1995) or M. Lewis & L. Hunter, *How to Make Economic Development Work for Your Band* (Port Alberni: Centre for Community Enterprise, 1989).

[25] A. McChesney, *supra* note 17 provides a litany of the various types of public legal education activities that go on in Canada..

[26] See M.L. Friedland, *supra* note 5 at 63-79; F. Winter, "Legalese, Bafflegab and 'Plain Language' Laws" (1980) 4 Can. Community L.J. 5; and L. Abdelahad, *Public Legal Education and Information and the Use of Plain Language in Legal Documents: A Synthesis of the Research* (Ottawa: Department of Justice Canada, 1987).

[27] See M. Moliner, *1997 Public Legal Education and Information (PLEI) Review: Tools for Moving Forward* (Ottawa: Department of Justice Canada, November 1997) at 10-11 for a recent discussion of the funding of public legal education in Canada.

[28] See Appendix I for a list of key agencies.

[29] See <http://www.acjnet.org> for a library of online resources and catalogues of library holdings of interest to the public.

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[30] ACJ*Net* alone reports in excess of 1,000 users per day. L.E. Gander & S.S. Sy, *ACJNet: Catalyst and Crucible for Transforming Justice* (Edmonton: Legal Studies Program, University of Alberta, 1998) at 37.

[31] J.W. Mohr, "The Roles of Interested Parties in Public Legal Education" in F.B. Sussmann & B.W. Morse, supra note 14, 55 at 62. At the time Professor Hans Mohr, a sociologist, was an anomaly in occupying a faculty position at Osgoode Hall Law School at York University

[32] For examples see www.acjnet.org/cgi-bin/legal/legal.pl?lkey=al&ckey=plei&tkey=white, for the web sites of public legal education agencies and descriptions of their missions.

[33] See M.E. Manley-Casimir & W.E.M. Cassidy, *Legal Literacy: Towards a Working Definition* (Ottawa: Canadian Law Information Council, 1986).

[34] F.B. Sussmann & B.W. Morse, "Conclusions and Recommendations" in F.B. Sussman & B.W. Morse, *supra* note 14 at 107.

[35] See D. H. Access Research Associates Inc., *Access to Justice: Research Reports on Public Legal Education and Information, Report no. 5: Public Legal Education and Information, a Survey of Canadian P.L.E.I. Providers* (Ottawa: Department of Justice, Canada, 1986) at 112.

[36] See G. Rivard, "The 'Public' in Public Legal Education" (1980) 4 Can. Community L.J. 34 for one such discussion.

[37] B. McKay & B. McKay, *Research in Public Legal Education and Information (PLEI): An Analysis, Draft Report,* (Ottawa: Department of Justice, 1986) go so far as to say that the current definitions of PLE are so inadequate that the subject is "not a researchable construct or concept."

[38] The development of PLE in Quebec is substantially different from that in English-speaking Canada and will not be addressed here.

Chapter 2 – The Radical Legacy of the War on Poverty

The turbulence of "the sixties" is a well-recognized phenomenon. A shift in world views seems to have occurred in surprisingly short order:

> A set of untroubled, even serene convictions as to the nature of man and society, and the ever more promising prospects of the future, of a sudden collapsed.[1]

Like other industrialized nations, Canada experienced a questioning of fundamental beliefs and assumptions about the ordering of society. Normally a law-abiding nation of citizens who express their political dream as 'peace, order, and good government,' Canada found at least some of its citizens challenging the wisdom and authority of their leaders and engaging in acts of civil disobedience, even violence.

As is so common in Canada, the way the phenomenon of the sixties was experienced in this country was strongly influenced by how it was experienced in the United States. The 'Ban the Bomb' movement, the American civil rights movement, the anti-poverty movement, the feminist movement, the protests against the Vietnam war, the Berkeley Free Speech Movement, and the advocacy of various other special interests[2] provoked Canadians to identify and come to terms with the forms of injustice that flourished in their own backyard. Nowhere in either country was the impact of this search for justice felt more keenly than on the legal system. Indeed, during the sixties, lawyers, judges, legislators, legal academics, and law students were challenged to completely rethink how and for whom the legal system really operated. In responding to that challenge, they pushed the limits of conventional understandings of law and practice.

Early American civil rights cases, like *Brown v Board of Education,*[3] were harbingers of that change. Those cases began to give real meaning to the abstract notion of equality, bringing with them hope for an end to discrimination on the basis of race. In the process, they demonstrated that law could make a material difference in the social life of that country. Litigating civil rights cases also reenforced the importance of technique and strategy in approaching social reform. Fighting for social justice, rather than just individual justice, meant selecting cases with care and taking them forward for their specific value in advancing the law along desired lines. The approach, theoretical implications, and impact of cases were considered in the context of each other, not just the context of the individual client.[4]

Since issues of race are bound up with issues of poverty, the lessons of the civil rights movement were easily passed on to the antipoverty movement.[5] There they were provided a public workshop in which the prototype for a new approach to social reform could be developed and tested. Canadians took up these concepts, inheriting a sometimes more activist legacy than the country was prepared to tolerate. In the case of legal services, it was a legacy to which Canada's constitutional and legal regimes at that time could not give full effect. But since the enactment of Canada's *Charter of Rights and Freedoms* in 1982,[6] the country has moved into the forefront internationally in guaranteeing equality in its constitution. Canadian lawyers have unique scope, indeed responsibility, for ensuring that law is used to its utmost in championing social justice.

Crucial as this progress has been, the radical legal project is far from complete both with respect to ridding the country of injustice and to pushing the limits of the law. The ideas about how law can be engaged in social causes and about what lawyers can do in advancing those causes are wearing thin. Though, they have enabled much to be gained, they are becoming increasingly stultifying, their flaws and contradictions increasingly constraining. This is particularly the case for public legal education. If PLE is to mature as a significant force in the cause of justice, these ideas must be reassessed.

Public legal education had its roots in the community legal education undertaken during the American War on Poverty. Revisiting that experience provides the context for beginning a review of the ideas, rhetoric, values, goals, and practices that continue to both impel and restrict the development of PLE in this country. That review exposes the new paradigm of social reform that dominated the period, confirms PLE's early links with the social justice movement,[7] and identifies the source of PLE's radical political ambitions. It focuses the primary themes and supplies the vocabulary that predominated in PLE conversations in Canada for at least a decade and which reappear from time to time. The review also exposes some of the tensions that existed within the legal services movement in the United States and that continue to confound and constrain PLE today. Most important, the review uncovers the origins of PLE's disappointing political performance. It shows that the future of PLE was compromised by early decisions made in the United States in the course of establishing new legal services for the poor, the main agencies through which community legal education was developed. These decisions had their own Canadian variants with the same results. In both cases, these decisions were based on or perpetuated particular understandings of the nature of law and so expose an area for fruitful enquiry – that ideas about the law itself are fundamental to the success or failure of the PLE enterprise.

SHIFTING PARADIGMS: A NEW CONCEPT OF SOCIAL REFORM

The War on Poverty was but a brief moment in the history of the United States. Yet it captured the imaginations of millions of Americans from Presidents to derelicts, and from corporate executives to welfare mothers. It inspired Americans to strive for true greatness as the first nation to finally put poverty behind it. In doing so, it gave sudden prominence to the ideas of a few individuals, ideas that were to dominate social, political, economic, and legal thought long after the War itself was abandoned. Important as the War was in its own right, it also serves as a case study for understanding the major shift in the paradigms of social reform that occurred at the time. The War popularized a new way of conceiving of the causes of social problems, shifting responsibility from the individual to a variety of social systems, including the legal system. It promoted a new type of social action to address these causes. To carry out their work, activists crafted a "community action agency," where they incubated a new concept in legal services that led them to become involved in a form of community legal education. These services shared a common motivating force – empowering communities to rid themselves of injustice. But as developments unfolded, the reality deviated from the ideal with the result that community legal education was left with the rhetoric of the new paradigm but little of its substance.

The build-up to the War on Poverty can be seen in the serious social problems that the United States was experiencing in the late 1950s.[8] In particular, the economy had become sluggish, unemployment rates were rising, Negro migration from the rural south to the urban north and west was turning city slums into physical representations of racial inequality, racial tension was increasing, and certain regions of the country were severely depressed. Automation threatened to make the plight of the marginalized worse rather than better. The normal unfolding of the universe was not taking care of these problems nor were governments responding effectively, so 'professional reformers' stepped into the breach. The emergence of this new class of reformers was an essential force behind the shift in the paradigm of social reform and its first feature.

Philanthropists,[9] social scientists, and activists began to bring their expert knowledge, rational, scientific, and empirical processes, technical skills, and a large measure of indignation to bear on the broad range of problems that daunted the government bureaucrats, social workers, educators, and others who traditionally worked with the poor. Through the application of rational problem solving methods aided by the insights of the social sciences, especially political economy, sociology, criminology, and social psychology,[10] these reformers strove to mobilize the community to "coerce the local administration into intelligent reform."[11] The lines of thought and action they adopted did not combine to produce a coherent, unified analysis of poverty nor a grand blueprint for eliminating it.[12] However, they did generate a rich assortment of ideas and experiences, many of which would later insinuate their way into government policy and into the thinking of restless radicals.

Foremost was a new concept of poverty. Puzzled by the failure of the economy to behave according to their expectations,[13] economists began to examine how the nation's wealth was being distributed. They found that, while some of the benefit of the nation's prosperity was trickling down to the poor, the relative gap between the rich and the poor was increasing. In his book, *The Affluent Society*,[14] John Kenneth Galbraith examined this phenomenon, concluding that America was experiencing a new kind of poverty. In the past, according to Galbraith, poverty in America was a widespread phenomenon consistent with the new country's underdeveloped economy. As the economy became stronger, most people prospered – but not everyone. For the first time in history, poverty was the problem of a minority of people. These unfortunate members of society suffered either from "case poverty" or "insular poverty." Case poverty arose from the particular qualities of an individual (such as a mental or physical disability, bad health, poor education, addiction, or a combination of these); insular poverty arose when an entire area of the country became "economically obsolete." On such islands of poverty, nearly everyone was poor, frustrated by their environment. This type of poverty became self-perpetuating since the entire community lacked the educational, health, and economic resources needed for subsequent generations to escape from their predicament. Vulnerable to evil influences, they were condemned to lives of despair. Galbraith argued that the United States had become sufficiently affluent that it could ensure each family a minimum standard of living so that poverty would not be the heritage of its children. For Galbraith, poverty amidst the affluence of the United States was a paradox; its continuation, a disgrace. He called for a re-examination of social goals, in particular, a reconsideration of the emphasis placed on the production of private consumer goods relative to the achievement of social goods like security, survival, and contentment. Galbraith put much stock in education as a public good that would play a crucial role in ensuring the future success of America as a nation.

By 1962, Michael Harrington had pushed these understandings further. In his controversial book, *The Other America*,[15] he reported that a shocking one-fifth of Americans lived in poverty. Dismissing Galbraith's "case" and "insular" explanations of poverty as being dangerous oversimplifications, Harrington countered that the difference between the new poor and the old poor flowed from the differences between the contemporary economy and that of a generation ago. Now, largely because of automation, prosperity meant decreasing opportunities for unskilled and semiskilled workers. These "other" Americans became victims of the very inventions and machines that provided a higher living standard for the rest of the society. They were "immune to progress." Their failure was not a personal but a social fact. Caught in a "vicious cycle," they inhabited a "culture" of poverty. Their problems were built into the very structure of their lives. Unlike poverty in the past, this poverty was invisible to others. Unseen, it did not attract any public attention or assistance. A minority, they were politically invisible and voiceless. In awakening America's conscience to this problem, Harrington called for tough action – a "lasting assault on the shame of the other America" which must "root out of this society an entire environment."[16] There must be a "conscious and political allocation of resources to meet public needs." Harrington hoped that would lead to "radical questions" being posed regarding "the nation's economy and social structure, which would signify both a culmination of liberalism and a most important point of departure for radicalism."[17]

The publication of these two books within four years of each other had tremendous impact. [18] If timing is everything, their timing was impeccable. In reflecting on the War on Poverty, Patrick Moynihan, one of its architects, linked these new insights into poverty with the broader shift in mind set that he argued was taking place at that time.[19] It was his view that people were concluding that "the nineteenth century faith in secular individualism had simply not worked out." More pointedly, the "liberal rationalist experiment had proved near to catastrophic."[20] As Moynihan saw it, Americans were embarking on a quest for community[21] to give new meaning to their lives. According to the new creed, the group should supplant the autonomous individual as the focus of America's hope. Moynihan argued that this rethinking of the role of community supported a reformulation of the concept of poverty in America. The new poverty of America came to be seen as exacerbated by the erosion of community that in turn led to over-reliance on government to solve the community's problems. Clearly it was necessary to restore Americans' confidence in their communities.

The new understanding of poverty contrasted sharply with earlier views which reflected the individualism to which Moynihan referred. Previously, poverty had been understood to be the natural consequence of unwise choices individuals freely made about their own lives.[22] It was a gendered view of reality that was seen to be a particularly appropriate explanation for poverty in America, a country that epitomized opportunity. In America, the most ordinary man was assured a reasonable prospect, even if something better might await the individual of exceptional capacities. It was up to each individual to make the most of his talents and opportunities. A growing economy was all that was needed for that formula to work and to reduce inequality and eliminate poverty in the bargain. A man had only himself to blame if he were poor. The economic circumstances of a woman were largely dependent on the status of her husband or father. Charity was extended to those who, by virtue of illness, age, or other disability, were incapable of attending to their own needs. The Great Depression tempered this view somewhat, bringing in its wake a call for the federal government to stimulate the economy so individuals could continue to prosper.[23] But nothing in this modification altered the fundamental belief that the natural rules of the marketplace were the best means of maximizing returns on labour, goods, and services.

In depicting the poor as social products and as victims of progress, Harrington inverted the traditional view that blames the individual for his condition and touts progress as his salvation. Harrington made social issues out of what were previously either private or technical matters and, therefore, outside the purview of public debate. In addition to contributing new insights into the lives of slum dwellers, both Galbraith and Harrington politicized poverty, progress, and economic matters generally. They challenged the complacent acceptance of the salutary effect of the marketplace and called for political action to counter its defects. This politicization of issues formerly seen as the personal problems of individuals was a second salient feature of the new reform paradigm.

Despite Harrington's claim that the new poor were invisible, the prevalence of poverty and its attendant problems had not gone entirely unnoticed. The deteriorating conditions of northern cities had already prompted action and the civil rights movement was gaining momentum. In the late fifties, the Ford Foundation, one of the newest but also one of the largest philanthropic organizations in America, joined the federal and local governments and other private foundations in launching a program to clear out the slums and revitalize inner city areas. When it became apparent that the physical rehabilitation of communities was displacing the poor to even worse conditions, Ford took the lead in looking for other ways to intervene. In particular, it began funding innovative educational programs that would offer slum children a better chance of adapting to society. From this base, Ford launched projects that addressed the more complex problems of the 'grey areas' of large modern cities and that served to develop the methodology of the new reform effort. If poverty was a political problem, it followed that poverty was also a function of power – more particularly, the absence of power.[24] Any effort to help the poor without otherwise changing existing power relationships was bound to fail. Since the poor did not even vote as a class, their political powerlessness was almost absolute. Poverty warriors of the radical sort set out to deal with this situation.[25] For some, this meant revolutionary politics, an intoxicating prospect for the restless. The grey areas projects would have to transform the political and social life of the ghetto.

> In the oldest and presumably strongest tradition of American democracy, the local people themselves, those actually caught up in the problem at hand, were to organize themselves to deal with it.[26]

This resort to the democratic underpinnings of American life was the third feature of the new approach to social reform. It came to be captured by the term 'participatory democracy,' one of the 'buzz words' of the War on Poverty.

The final feature of the new concept of social reform was the form that social action was to take. [27] Ford first tried to mobilize communities to effect change through established institutions. When those institutions proved ineffective for achieving needed reforms, the foundation "inductively and reluctantly"[28] conceived a new form of independent community agencies. These new community action agencies were to bring together the range of public and private interests necessary to exert "power through the leverage of money, to mobilize and redirect the energies of existing public and private bodies."[29] To be relevant, these agencies needed to take a comprehensive approach to dealing with the problems of the poor rather than just focus on the particular aspect of poverty that was their discrete area of responsibility. Ford had no **program** for reform, just a **process**.[30] Agencies were to act as facilitators, analysts and catalysts, crystallizing the intentions of the community with respect to an issue without imposing on its freedom to solve its problems as it saw fit. In doing so, these new agencies of reform would split the old social atoms of family and village to liberate the individual particles, releasing tremendous human energy. It was up to the community to define how its energy was to be harnessed and what it was to accomplish. If the process was sound, the product would be too. Research, testing, innovation, experimentation, and evaluation plus the involvement of the community people affected would keep these new agencies vital and relevant. Local participation would make them legitimate. If necessary, that legitimacy would extend beyond merely advocating on behalf of the poor to adopting confrontational tactics in dealing with institutions that had become oppressive.

One of the projects that Ford funded serves as a model of this new approach to social reform.[31] Initiated by the Henry Street settlement house in Manhattan, Mobilization for Youth (MFY) was a non-profit agency composed of representatives of agencies and institutions on the Lower East Side of New York City and individuals recommended by the New York School of Social Work at Columbia University. These professional reformers were to employ a systematic approach to the problem of delinquency. MFY's broad program of action was based on an operating hypothesis integrated with a program of research and evaluation. The operating hypothesis derived from the work of sociologists, Richard Cloward and Lloyd Ohlin, at the Columbia Schools of Social Work. They had applied the concept of alienation to the phenomenon of the juvenile delinquency of boys and concluded that delinquency was not an individual pathology but rather the behaviour of normal youth who had normal expectations that society did not permit them to realize through normal channels. Frustrated, boys turned to alternate channels that typically were illegal. Criminal behaviour did not reflect callousness on the part of youth, but rather normlessness, an anomic condition induced by society. Deviance became the unhappy consequence of the inability of youth to achieve success in middle-class terms. Thoroughly inculcated with solid American values and aspirations, the delinquent wanted to conform but found the normal means of realizing his goals blocked. Because of his deprived social situation – "poor schools, racial discrimination, squalor"[32] – the mainstream "opportunity structure" was closed to him. Like Galbraith and Harrington, Cloward and Ohlin transformed the problems of individuals into a social condition and argued that the solution to delinquency was to improve the delinquent's environment and, thereby, his opportunities. They prescribed a "community development" approach to treating these "sick" communities.[33] As the MFY experience unfolded, this proved to be a political analysis requiring radical political action.

MFY took its community as its laboratory for a social experiment characterized by an intensive program of action and research. It sought to energize the community in a coordinated effort to deal with the problems their children were facing in maturing. MFY was to provide the social and psychological resources needed to expand the opportunity structure to make it possible for youth to conform to society's expectations through socially acceptable means MFY's program ideas were to come from the people of the area itself. Staff was trained to understand that the "indigenous disadvantaged" knew more about what ailed them than did social engineers from the university. The MFY plan was to mobilize not just the youth of the area, but the entire community in a coordinated effort to deal with the problems children were facing in growing up. MFY employed a variety of strategies: Urban Youth Service Corps, community organizing, neighbourhood service centers, a coffee-shop project, a detached worker project, and preschool and elementary school programs. A breakthrough in both the philosophy and practices of social service agencies, MFY served as an early representation of the ideas that would sustain the Community Action Program set up later as part of the War on Poverty.[34]

Mobilization For Youth attracted the attention of the President's Committee on Juvenile Delinquency and Youth Crime (PCJD) formed in 1961.[35] The PCJD and Ford often supported the same organizations and the same types of experiments: educational innovations, vocational training and employment services for young people; and community service centres. These projects generally adopted similar principles of action: planning, including research and analysis; the participation of all relevant agencies in the community; the endorsement of political and informal leadership; and the involvement of those the programs were to benefit. Program evaluation was also an essential component of these projects. In general, projects were conceived as 'demonstrations,' and grants as 'seed money.' The idea was that if the project succeeded during the defined period, the community would be willing to pick up on-going costs. The new money injected into the exercise was to stimulate new thinking and then to lever old dollars. To help ensure this transition, local 'matching funds'" were often required before a project would be funded by either the Ford Foundation or the PCJD. This became the blueprint for the kind of community action projects that would be set up in the War and that would be replicated virtually unaltered by the federal government in Canada soon after.

As the community action agency model took shape, it tended to bear the following characteristics:

- the agency was independent from the formal local government processes;

- it involved multiple stakeholders, especially those being served;
- it employed "scientific" management techniques in carrying out activities;
- it emphasized process rather than program;
- it undertook a diversity of activities;
- it used pilot projects to test ideas; and
- it adopted strident tactics of advocacy and confrontation when necessary.

Lurking in this model for social action was a time bomb. In creating "a private, tax-free organization, responsible to none but its own wishes,"[36] the Ford Foundation unwittingly threatened the fundamental political structure of America.

In the context of the War on Poverty, the interplay of the elements of the new social reform paradigm transformed American social life.

WAGING THE WAR AGAINST POVERTY

Despite the urgency of the problems of the poor and the innovative work being done by social reformers and concerned government agencies, the poor might well have continued to be publicly ignored had it not been for the personal intervention of John F. Kennedy, President of the United States.[37] It was not public pressure that provoked the launching of the "most controversial of all the domestic programs of the Kennedy-Johnson era."[38] Important as social forces were in preparing the country for an anti-poverty campaign, the need for and timeliness of such an initiative was the insight of President Kennedy himself. During Kennedy's first term, several important pieces of social legislation were passed including the landmark *Area Redevelopment Act of 1961*,[39] *the Manpower Development and Training Act of 1962*,[40] and the *Vocational Education Act of 1963*.[41] Concerned that there was a slowing down of the rate that the economy was taking people out of poverty, Kennedy's Council of

Economic Advisers reported that the country seemed to have a problem of 'structural,' as opposed to 'cyclical,' unemployment. If left unattended, this problem might threaten the stability of the country. Seeing in his country's malaise the possibility of an initiative with which to define his second presidential term, Kennedy directed the Council to prepare a proposal for an anti-poverty program. Before the Council could complete its review, Kennedy was assassinated and Lyndon B. Johnson assumed the Presidency.

At least as supportive of the anti-poverty initiative as Kennedy,[42] Johnson convened a task force to prepare an antipoverty program and in January 1964, he declared "unconditional war on poverty in America."[43] Adopting the language of Galbraith, the War's enabling legislation proclaimed that the goal of the war was to "eliminate the paradox of poverty in the midst of plenty." The Act promised that every individual was to be given the opportunity to contribute to the achievement of the "full economic and social potential" of the United States and "to participate in the workings of society."[44] Fundamental to the war plan was the belief that the American economy was strong enough to sustain a reasonable standard of living for all members of that society.[45] The question was not **whether** it could be done, but **how** it should be accomplished. Dubbed the "War on Poverty," the campaign was legitimized through the Economic Opportunity Act (EOA)[46] and coordinated nationally through the Office of Economic Opportunity (OEO)[47] under the direction of Sargent Shriver, a lawyer and former chair of Johnson's antipoverty task force. According to the War office, for victory to be assured an all out assault had to be made on the causes of poverty.[48] It would not suffice merely to continue with traditional notions of of ameliorating the conditions of the poor through social services and welfare payments. The War had to provide the poor with "opportunity" and a "hand up, not handouts."[49] The aim was not just to "put money in people's pockets," it was to "put hope in their hearts and pride in their step."[50] Everyone was to have "the opportunity to live in decency and dignity."[51]

Contained within this rhetoric were two separate but interrelated objectives: one of eliminating poverty and the other of equalizing opportunity. To meet these joint objectives, the federal government used its granting powers to fund a host of services including "employment, job training and counseling, health, vocational rehabilitation, housing, home management, welfare, and special remedial and other noncurricular educational assistance."[52] Comprehensive medical[53] and legal services,[54] though not included in the original war strategy, were soon added. As this array of services suggests, poverty had come to be seen as a complex syndrome requiring an integrated, multifaceted, multidisciplinary response. Since the direct causes and conditions of poverty were seen to vary from community to community, the federal government did not supply an overarching analysis of poverty nor dictate local battle tactics. Rather, through a new form of "creative federalism,"[55] the federal government would work hand in hand with poor communities throughout the country to support local initiatives. Everyone was to have a part – government,[56] business, labor,[57] professionals, academics, the schools, the service sector, private individuals,[58] and the poor themselves.

With $340 million appropriated for the second title of the EOA,[59] and led by a former trade unionist, Jack Conway,[60] the first staff of the Community Action Program of the Office of Economic Opportunity set about encouraging the creation of a force which would have "immediate and irreversible impact" on poor communities.[61] Community Action Agencies (CAAs) were to coordinate and deliver services in their communities as needed, but their key role would be to spearhead the kind of social action that was required to eliminate poverty. One of the most prominent forms these community action projects took was the neighbourhood information center. The purpose of these centers was to establish a social service presence in the communities they were meant to serve. They generally provided outreach, advice, intake, and referral with respect to a host of services needed by the area residents. Direct service, such as homemaker services, consumer education and crisis financial aid, was also available at some neighbourhood centers.[62] Shriver referred to these as "supermarkets of social service for the nation's cities."[63] In addition, CAAs formed the beginnings of the infrastructure of supportive agencies which was needed if the poor and otherwise disadvantaged were to develop the political force they needed to alter their realities.[64] Though the concept of CAAs was largely untested, they would be the war's secret weapon. Or, as "poverty Czar"[65] Shriver put it: CAAs would be the "corporations of the new social revolution."[66]

It took time for CAAs to get organized, assess their communities' needs, and submit proposals. Although the main thrust of CAAs was to undertake local initiatives, the OEO was under pressure to get the antipoverty campaign off to a bold start. To speed the process, it offered several pre-approved, off-the-shelf, "National Emphasis Programs" which CAAs could use immediately.[67] Foremost among these was the Headstart preschool program, but the national office also franchised Upward Bound, and, before long, Health Centers, and Neighborhood Legal Services programs. By the end of 1965, the OEO had funded approximately 600 community action agencies[68] and, by 1969, over 1000 CAAs, mostly private nonprofit agencies, in every state and in all the major metropolitan areas that had high concentrations of poor people.[69]

Staffing of the CAAs varied considerably; many included a combination of professionals and members of the community being served.[70] The prospect of organizing in the slums tended to attract a particular type of person, often those who were "strongly influenced by the New Left criticism of American society as over-structure, overorganized, restrictive of freedom, hardly democratic and in need of a thorough shaking up."[71] Prominent among the staff were anti-poverty militants, former civil rights militants, and ex-members of the Peace Corps.[72] With their help, Harrington's "other America" would rise up and confront the powerful establishment that had been keeping it down. Since the OEO did not impose a theory of the nature and causes of poverty, the new poverty warriors had to draw on whatever they could distil from the ideas generally in circulation and on their own experience and common sense in finding pragmatic solutions to the problems they encountered. Projects varied widely, sometimes responding to one insight into the conditions of the poor, sometimes another. In the result, CAAs and the other organizations they spawned provided both conventional and innovative services to millions of Americans. Confronting oppression wherever they found it, CAAs challenged practices ranging from the 'man in the house rule' and welfare eligibility rules to illegal evictions, and the scheduling of parent/teacher meetings as they advocated on behalf of the poor.[73]

To this point, the War on Poverty looks very much like the pre-war anti-poverty efforts sponsored by the Ford Foundation and the President's Committee on Juvenile Delinquency and Youth Crime, just more extensive and intensive. All reflected a new paradigm of social reform that was based on the assumption that fundamental changes in social conditions could be effected by combining the expertise of social scientists in analyzing social problems with the latent capacity of communities to solve their problems. They also reflected the tendency of professionals to find political issues lurking in every aspect of the lives of the poor and used community action agencies to mobilize communities to exercise their democratic birthright. It was with respect to these latter features that the War began to distinguish itself from its precursors. While the War office did not demand adherence to a particular theory of poverty nor any specific program for addressing the plight of the poor, the legislation governing the antipoverty program did require the "maximum feasible participation"[74] of the poor in the work of the CAAs. Moynihan and others maintain that what that phrase meant and the issue of participation, itself, were completely ignored in the debate surrounding the introduction of the War legislation. Once let loose on the battlefield, the political significance of the issue became manifest.

Officially, participation was an open and flexible concept intended to suggest the 'meaningful' and 'effective' involvement of the poor.[75] In practice it was pushed to mean as much involvement of the poor as possible at every stage of the process and for every purpose. Beginning as participation in the benefits of neighbourhood services, it extended to participation in the delivery of those services, then to participation in the planning and administration and even control of services, and finally to participation in the broader politics of the community and the country. The War office encouraged participation through both traditional and innovative democratic approaches including group forums and discussions, nominations, and balloting. Participation was to be stimulated and facilitated by grass-roots committees, block elections, petitions, referendums, newsletters, films, literature, and mobile units operating from information centers. Both individual and group input and protest with respect to a community action program, whether being planned or already undertaken, was to be welcomed if not encouraged. Participation would begin to counter the powerlessness that the poor felt toward the many authorities they had to contend with in their daily lives. Through action, the poor would acquire a sense of their own power and of their own ability to realize their aspirations. The War would mobilize the poor, not just as individuals but as groups, to bring about fundamental changes in their communities and their lives. If that meant confrontation, then confront they would.

Cloward argued that confrontation had a long and noble pedigree:

> The controversy over the involvement of the poor has its roots in relatively moderate ideologies – self-help, local autonomy, democratic collective action, and the importance of ethnic separatism. The struggle, in short, is in the tradition of urban politics and nothing more. Local groups, composed largely of today's ethnic poor, are merely beginning to articulate their interests as blocs, and to demand that they be aided in building institutions to give those interests form and coherence.[76]

This might be a form of democracy that established power groups might have difficulty valuing, but for Cloward, that did not make it a revolutionary concept. Revolutionary or not, it was the concept that would prove most problematic in establishing neighbourhood legal services.

In the ideology of participation, it became axiomatic that the poor knew their needs better than others and that simple charity could do more harm than good creating, as it did, a dependency on others and a reduction in the recipient's self-esteem.[77] In the world of the CAAs, the helping professions, particularly the social work profession, were looked at with some suspicion. Professionals were criticized for their lack of knowledge of the poor and for their difficulty in adapting to the needs and life styles of their clients. At a deeper level, critics charged that existing professionals had "coexisted too comfortably with poverty."[78] Help could not be expected from the "establishment" because it had a vested interest in maintaining the "status quo."[79] Even the efforts of the well meaning, "the do gooders," and the experts were suspect. Cloward warned that "questions of class and ethnic politics might be converted into technical, professional and administrative matters."[80] In short, professionals created, as well as, alleviated problems.[81] This was an ominous warning that went unheeded. Since the new reform paradigm was predicated on the participation of experts and specialists, the requirement for participation of the poor did not rule out the involvement of professionals. It meant they should work cooperatively **with**, rather than **for**, the poor to meet their needs. Special training was provided to social workers to make up for their deficiencies in understanding the needs and realities of the poor.[82] New categories of indigenous semi-professionals and non-professional aides were invented to bridge the gap between the professional and the poor. These aides were also to help meet the tremendous manpower shortage that was projected if the needs of the poor were ever to be met.[83] But help was not to be dispensed from above. As much as possible, attacking poverty was to be a "self-help" effort of the poor themselves. Ideally, where professional help was required, professionals would be hired by the poor. At a minimum, the poor should be partners with professionals.[84] Giving the poor this much control of services ministering to their needs represented a radical departure from the traditional methods of service of most professions and one that the legal profession resisted with full force.

Resist as they might, professionals were being challenged by a proposition that could not easily be dismissed. The link between 'participation' and 'democracy' resonated with deep traditions in American politics. When all else fails, Americans resort to their unwavering belief in themselves, their individual liberty and autonomy, the free enterprise system, and their corresponding right to participate in decisions affecting their lives.[85] The problems Americans were experiencing were due to the erosion of this capacity – democracy, the birthright of all Americans, had become too distant from the people to be liberating. A man could no longer be assured that he could achieve anything positive by his own efforts, provoking in him a profound sense of apathy and malaise.[86] Families were deteriorating as fathers abandoned them, leaving women to be both mothers and bread-winners. Mother-led families left sons without strong role models; the economy left them all with no future. This condition was intolerable. Whatever their sorry state, the poor were Americans – rights-bearing citizens.[87] If mainstream forms of democratic participation had failed them, new forms would have to be devised to empower them.[88] The Community Action Program would give them new voices and new powers with which to affect city programs so that they would operate more humanely and effectively.

> It is a grand spectacle, not simply of democracy at work, but of democracy trying to stimulate the response that makes it work better. The danger is that the degree of order that any social system needs will be undermined. The hope is that a creative disorder will ensue, one that permits welfare agencies to work better, and with a larger participation from their clients.[89]

If there were risks associated with these new forms of democracy, they would have to be taken.[90]

Notions of power, citizenship, and democracy came together in the concept of citizen participation. Citizenship participation meant redistributing power so that the 'have-not citizens,' who had been excluded from the political and economic processes, would be deliberately included in determining "how information is shared, goals and policies are set, tax resources are allocated, programs are operated and benefits like contracts and patronage are parceled out" so they could bring about the reforms needed to share in the benefits of the affluent society.[91] As Moynihan observed, Americans seemed particularly ready for, if not vulnerable to, the rallying cry of citizen participation. Social institutions that should have given rise to "shared expectations, confidence, and trust"[92] seemed unable to respond to pressing social problems.

Of all the functions of the CAAs, the social action mandate soon became most visible. Though carried out with only a small fraction of the CAAs' resources and by only some CAAs at that, social action became the trade mark, if not the badge of honour, of the new breed of community developers who set out to change the landscape of American cities. That social action tended to follow a common pattern: protest about a problem, organization and mobilization of the victims of that problem, confrontation with those who resisted the needed change, and finally successful social change.[93] CAAs legitimized "community control" and confronted formal democracy with "participatory democracy." Their very existence – in effect constituting a new level of government[94] – contested the legitimacy of traditional municipal, state, and even national governing structures.

> Of a sudden the city councilman was not enough, the state assemblyman not enough, the congressman not enough, the mayor and the governor and the President but tools of the power structure.[95]

Early OEO staff realized that in establishing CAAs, they were engaged in a race against time: the public, let alone the politicians, were not likely to support so subversive a program once its agenda became known.[96] Almost designed for conflict,[97] CAAs soon became engaged in a "ruthless struggle for power" with local officials.[98] In some municipalities, government officials tried to dominate the antipoverty program and some local politicians tried to bring their CAAs within the ambit of their political patronage.[99] The OEO generally resisted these efforts, with sometimes disastrous consequences.[100] As the social action dimension of the CAAs began to be felt, it met with resistance from the "establishment" as municipal and state governments tried to block projects. As the political import of participation became increasingly evident, support for it waned. The very idea of the poor participating in certain kinds of decisions, like managing legal services, was diabolical to some stakeholders and they manned their barricades against it.

A crucial by-product of the ensuing struggle was the radicalization of the middle class promoters and organizers of CAAs.[101] Reflecting on the experience of those involved with Mobilization for Youth, Moynihan suggested that as they learned more about the system, they became more opposed to it.

> Perhaps as the system proved sluggish in response to their initiatives, they grew more determined to impose their will. But for certain, men such as Cloward moved fairly rapidly from the effort to integrate the

> poor into the system to an effort to use the poor to bring down the whole rotten structure.[102]

Moynihan saw this repeated in the more general pattern of the experiences of CAAs. It seemed that philanthropists and social reformers had not taken their own talk about the 'power structure' seriously enough. They seemed to assume naively that that those who had power would willingly part with it.

> Social agencies accustomed to being benefactors, individuals serving on boards of social agencies, social workers, teachers, mayors, county executives – all need to begin to give up *willingly* a certain amount of power so that we can make a transition, without violence and bloodshed, to a healthier society.[103]

The very meaning of the word 'power' should have belied that expectation. Moynihan saw Cloward and others as moving steadily away from facilitating entry into that system by outsiders and toward "near detestation of the system itself."[104] By 1965, Cloward was saying that strategies of conciliation would not be sufficient to overcome the various interests at stake in the War and that conflicts might even be exacerbated by government policies.[105] Instead, he argued for a coalition of civil rights organizations, militant anti-poverty groups, and the poor to create a "political crisis ... that could lead to legislation for a guaranteed annual income and thus an end to poverty." Legal education, advocacy, and demonstrations were needed to egg the poor on to the point where an issue finally ignited their anger and turned them into a force that the government had to appease.[106]

The War on Poverty quickly ran into problems. Its initial budget of 750 million dollars[107] had to be spent quickly and on highly visible projects in order to meet the political demands on the program.[108] In this haste, projects were often not properly planned nor vetted, leaving both the OEO and the local organizations vulnerable to allegations of mismanagement. CAAs proved particularly problematic. Social unrest throughout the country was escalated. The CAAs' detractors argued that radicals and communist infiltrators employed by CAAs were instigating much of the urban violence that seemed to attend their presence. CAA supporters countered that these agencies helped to control volatile neighbourhoods. In any event, CAAs became associated with militant techniques of disruption and force directed against the "power structure." Certainly organizing the poor to take on city hall had its risks. Within a year, mayors demanded and the President agreed that something had to be done.[109] As Moynihan emphasized, President Johnson had wanted **coordination** not **conflict**.[110] Federal Democrats could not support a program that undermined Democratic mayors. Other critics charged that the CAA strategy was flawed much more fundamentally. James L. Sundquist, one of the War's planners questioned,

> Can a national government maintain for long, a program that sets minorities against majorities in communities throughout the land?[111]

In posing that question, Sundquist raised one of the most troubling dilemmas for contemporary pluralistic democracies like Canada. How is the tyranny of the majority to be constrained?

With CAAs generating unexpected controversy and the war in Vietnam escalating, in 1966, the War on Poverty began to experience cut backs and redirections in funding, undermining much of the freedom that the OEO and local organizations had previously enjoyed.[112] To stave off anticipated future losses, OEO staff reoriented the CAP to highlight its national emphasis programs, including its Legal Services Program, rather than its local initiative programs, and promoted the service coordination function of CAAs. These measures had their own consequences as radicals and activists accused the OEO of selling out to the establishment and began mounting campaigns **against** the antipoverty program.[113] So it was that, after a brief period of exuberant action, the war office had been driven to retreat and become plagued with mutiny.

Whatever the cause and effect relationships, community action agencies were at the center of the social problems that America was having at the time. The most innovative of the War on Poverty arsenal, CAAs were the product of much of the radical thinking that went into the design of the War. The locus of most of the political action in the War, CAAs were the source of much of the radical content that came out of the fray. Controversy of this sort made for good news stories, so, thanks to the media, CAAs came to be almost synonymous with the War itself. The prospect of mobilizing the poor to confront the institutions that oppressed them captured the imaginations and fuelled the fears of Americans as nothing else in the War. Grounded in traditional American values of self-help and democracy, CAAs were at once the most conservative and the most radical element of the most ambitious social program ever undertaken in America.

The War on Poverty and its Community Action Program was as complex a phenomenon as the problem it set out to solve. Reality seldom lived up to the grand language used to describe it. Still, this simple version of the story highlights the innovative and radical thrusts of the campaign and captures the hyperbole and the romanticism that attended the project. It is important to note that the analysis of the poverty warriors, let alone their experiences, was not as homogenous as this description suggests. As critics are quick to point out, throughout the "official" story of the Great Society's all out campaign against poverty runs a sub-text of confusion, contradiction, and compromise. [114] It begins with the leaders' lack of clarity and agreement as to what the project was all about and is followed closely by a series of inadequately developed concepts, poorly thought out strategies, unworkable concessions, and ultimately outright refusal to cooperate on the part of a number of agencies.

One might think that an effort as massive as a war on poverty would start with at least a clear idea of what poverty was. Yet what constituted poverty, how prevalent it was,[115] what its features were, how it compared to poverty in other times and places,[116] and most important, what should be done about it,[117] were all contested issues.[118] What, if any, difference did it make how you analyzed poverty?[119] And whose idea was all this anyway? The poor were not in revolt. Indeed, the poor were perhaps the most amazed and bewildered of all to see the sudden concern for problems they had lived with for generations.[120] Was there no more to the War than the discovery of poverty by a handful of self-appointed social reformers?

It was no help that the concept of community was also ill defined.[121] In the *Economic Opportunity Act*, the term appeared to refer to a geographically identifiable group of people. But the meaning of the concept otherwise seemed to vary depending on the context in which the term was used and, more particularly, the politics of the user. Who was in and who was out of any community varied. While the concept of community was romanticized, its present state was decried. Community was both in need of salvation and the source of that salvation. If the underlying concepts of poverty and community were not well established, it should come as no surprise that the concept of community action, and the roles of community action agencies and their host, the Community Action Program of the EOA, were equally unclear. Whether the main function of CAAs was to coordinate social services, to generate innovative new services, to bring about social change, or to tear down the entire system was never clarified. Whether CAAs should work with existing institutions, effect better community planning, or undermine the "power structure" and empower the poor was never resolved. The presence of these different understandings was not even acknowledged let alone addressed. The Community Action Program was little more than a grab bag of projects that fit within the vague terms of the legislation authorizing this vital but underdeveloped war strategy.

The War on Poverty, Johnson administration's great effort of social engineering, was not grounded in a solid social or economic analysis. Rather, it had to rely on a loose collection of eclectic and sometimes conflicting policies, honed into a legislative program that met a sufficiently diverse range of interests to be politically viable, but which lacked real political or social commitment.[122] The cynic might be forgiven for wondering if there really was a War on Poverty or whether it was a mirage effected by Johnson to distance himself from Kennedy (who had died before he was publicly associated with the anti-poverty campaign) while at the same time immobilizing Republican opposition to his presidential ambitions. To add insult to injury, skirmishes between poverty warriors were often at least as significant as those with their foes. As Carl H. Madden put it, "The war *on* poverty is becoming a war *over* poverty."[123] Chaim Isaac Waxman goes further and says that the anti-poverty program was "doing more to perpetuate the 'culture of poverty' than to eliminate it" and that despite its best intentions might become a "war on the poverty-stricken, the non-poor blaming the poor for their own misfortune."[124]

But so be it. That is what it was. The invocation of military rhetoric by the War's leaders was appropriate. Wars are not usually fought over well thought-out positions but rather on affronts to cherished values. Troops are not rallied with logic but with calls to patriotic duty. Poverty was such an affront and citizens were called up for this most peculiar civil war by appeals to their sense of decency. The fact that the generals were in disarray and that the foot soldiers invented much of what they did as they roamed the conceptual countryside added to, rather than detracted from, the richness of the experience. What was important about the War was not whether there was agreement on the many issues that it entailed, but the fact that it was possible to debate those issues, often fiercely. It was a time when it was legitimate to think the unthinkable, to do the forbidden, and to discover anew the basic premises of

American life. Radical options were given credence even if not unanimously embraced. Little was taken for granted; everything seemed up for grabs. The absence of clear definitions left room for radicals to have some impact on mainstream thinking and to establish some conceptual and practical footholds. In giving new meaning to old notions of power, citizenship, and democracy, they contributed to new intuitions about the concept of social justice.

CONCLUSION

During the late fifties and early sixties, a major shift occurred in the paradigms of social reform as professionals took the lead in politicizing issues that had previously been seen as personal and in invoking fundamental principles of democracy to mobilize communities to eliminate injustices in their midst. This new approach to reform provided the underlying structure of the War on Poverty that called up Americans to bear arms against the poverty that existed amidst the unprecedented affluence of their country. Poverty was transformed into powerlessness and political measures were needed to counter it. The efforts of poverty warriors were legitimized through a remarkable new social institution – the community action agency. On the surface, these new 'umbrella agencies' sounded innocuous, and were politically saleable. They offered a much-needed means of coordinating and delivering services in poor communities, but they also enabled a new kind of community action that empowered the poor to participate in decisions affecting their lives. Process became more important than product as organizations sought to harness the latent resources of the poor in solving their own problems. Community development and animation became preferred strategies for mobilizing support.

Once professionals became involved in these services, they expected to be taken seriously by the institutions with which they dealt. When their efforts were blocked by the establishment, reformers experienced first hand what was wrong with

America. Institutional intransigence called for radical action and radical action was what they delivered. All this was made possible through a new understanding of the role of the federal government in supporting local initiatives. Through the Community Action Program of the Economic Opportunity Act, the government of the United States encouraged the proliferation of this new form of participatory democracy throughout the country.

The effort to reinterpret and revitalize democracy was at the heart of the War. As Alinsky saw it, Americans were still struggling with the central issue of the debate in the Federalist Papers as to whether or not the people could be trusted.[125] Should the poor be incorporated into the democratic body? Was the development of power among the poor something to be welcomed or feared? In tackling these questions, Americans engaged in a back-to-basics move to salvage democracy and with it, citizenship rights, social justice, and the major institutions of American life. In the Alinsky sense, nothing could be more radical. So significant a re-examination could not occur without threatening those whose interests were vested in the *status quo*. As that threat became apparent, community action agencies found their resources increasingly directed to fighting a rear guard action. They were beaten down in the campaign but in the short time they enjoyed favour, community action agencies produced a phalanx of activists, many of them young middle-class professionals, whose understandings of the dynamics of American life had been fundamentally altered.

As cause after cause fought for national attention, the plight of the poor enjoyed only a moment as a priority on the country's domestic agenda. What makes the War on Poverty particularly impressive, though, was that in so short a period of time, major assumptions underlying American political life were ardently debated, commitments to address ancient problems were renewed, and innovative ways of conceiving and organizing social action were tested. It may be that those who launched the War on Poverty were simply practising the time-honoured art of the politician and that the War itself was badly conducted. But notwithstanding the multiplicity of personal and social agendas, the lack of an integrated analysis, and the host of practical problems that beset the program, in its short period as front-page news, the War left a lasting legacy to both Americans and Canadians. Included in that legacy was the War's hopeful and compelling rhetoric; its sociological and political approaches to analyzing problems; the new form of participatory democracy it espoused; the community action agency it proliferated; the rejuvenated practice of community development and animation it required; the legitimization of the confrontation it demanded; and the revolutionary fervour it provoked. So rich was that legacy that it has sustained progressive action for decades since.

One of the most enduring bequests of the War on Poverty was a new concept in legal service for the poor. Since the need for such services had not been appreciated when the War strategy was first being deliberated, specific provision was not made for them in the EOA. They came into being through the Community Action Program.[126] In the result, legal services agencies were not only challenged by the War's rhetoric and ambitions but were also infused with the CAAs' potent political understandings of poverty and subject to, complicit in, and sometimes compromised by, the CAAs' radicalizing influence. They were also compromised by the fundamental shortcomings that plagued the War and that contributed to its eventual failure.[127] Though the Legal Services Program survived the War and was discharged to serve in a less contentious arena, its problems during the War, including some of its own making, left indelible marks.

Generally more willing to accept authority than Americans, Canadians looked askance at some of the more radical aspects of the inheritance they were being offered. Although the ideas about using the law for social reform flowed easily across the border, it proved much more difficult to implement them in the Canadian context. Though legal services provided the testing ground for community legal education in Canada, public legal education had to assume a broader meaning and distance itself from the legal services movement to thrive.

Chapter 2 Notes

[1] D.P. Moynihan, *Maximum Feasible Misunderstanding: Community Action in the War on Poverty*, 2d ed. (New York: The Free Press, 1970) at 7.

[2] These were interrelated phenomenon. See D.P. Moynihan, *ibid.* at 63 and C.H. Madden, *supra* note 2 at 59 on the impact the civil rights movement was having on the anti-poverty campaign. See S. Evans, *Personal Politics: The Roots of Feminism in the Civil Rights Movement and the New Left* (New York: Vintage Books, 1985) on the impact of the civil rights movement on feminism. See also H.D. Graham, *The Civil Rights Era: Origins and Development of National Policy 1960-1972* (New York: Oxford Press, 1990); J.C. Harvey, *Black Civil Rights During the Johnson Administration* (Jackson: University and College Press of Mississippi, 1973); D.B. King & C.W. Quick, eds, *Legal Aspects of the Civil Rights Movement* (Detroit: Wayne State University Press, 1965); and J.H. Wheeler, "Civil Rights Groups - Their Impact upon the War on Poverty" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 152.

[3] *Brown v Board of Education* [1954] 347 U.S. 483.

[4] J. Greenberg, *supra* note 4.

[5] See *ibid.*; S.A. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* (Baltimore: John Hopkins Press, 1969) at 15 and 86-88; R.A. Levine, *The Poor Ye Need Not Have With You: Lessons from the War on Poverty* (Cambridge: The M.I.T. Press, 1970) at 45-46; and R.H. Leach, "The Federal Role in the War on Poverty Program" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 18 at 37.

[6] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* 1982, c. 11.

[7] D. H. Access was unable to identify the link between PLE and the social justice movement. D. H. Access Research Associates Inc., *Access to Justice: Research Reports on Public Legal Education and Information, Report no. 5: Public Legal Education and Information, a Survey of Canadian P.L.E.I. Providers* (Ottawa: Department of Justice, Canada, 1986) at 114.

[8] This discussion is drawn chiefly from P. Marris & M. Rein, *Dilemmas of Social Reform, Poverty and Community Action in the United States*, 2nd ed. (New York: Atherton Press, 1973) at 10-13; D.P. Moynihan, *supra* note 1 at 38-62.

[9] For the importance of private foundations, see D.P. Moynihan, *supra* note 1 at 35; and G.H.J. Esser, "The Role of a State-Wide Foundation in the War on Poverty" in R.O. Everett, *supra* note 2 at 90.

[10] D.P. Moynihan, "The Professors and the Poor" in D.P. Moynihan, ed., *On Understanding Poverty: Perspectives from the Social Sciences*, vol. 1, 2d ed. (New York: Basic Books, 1969) 3.

[11] P. Marris & M. Rein, *supra* note 8 at 209.

[12] Sundquist identified four forces at play. J.L. Sundquist, "Origins of the War on Poverty" in J. Sundquist, ed., *On Fighting Poverty: Perspectives from Experience*, vol. II (New York: Basic Books, Inc., 1969) 6.

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[13] See J.K. Galbraith, *The Affluent Society* (Boston: Houghton Mifflin, 1958) at 21-33 for a brief review of the evolution of contemporary economic theory.

[14] Galbraith was a policy adviser to the Democratic Party leaders. The summary provided in this paragraph is drawn from J.K. Galbraith, *ibid.*, chiefly from chapters 22 and 23 at 308-333 and chapter 25 at 349-356.

[15] M. Harrington, *The Other America: Poverty in the United States*, Rev. Ed. 1971 (Baltimore, Maryland: Penguin Books, 1962). The summary in this paragraph is drawn chiefly from Chapter 1 at 1-19 but also from his restatement in M. Harrington, "The Politics of Poverty" in C.I. Waxman, ed., *Poverty: Power and Politics* (New York: Grosset & Dunlop, 1968) 180.

[16] M. Harrington (1962), *ibid.* at 12.

[17] M. Harrington (1968), *ibid.* at 196.

[18] The plight of the poor was further popularized through E. May, *The Wasted Americans; cost of our welfare dilemma* (New York: Harper & Row, 1964).

[19] This discussion is drawn from D.P. Moynihan, *supra* note 1.

[20] D.P. Moynihan, *supra* note 1 at 7.

[21] This was the theme of R.A. Nisbet, *The Quest for Community* (New York: Oxford University Press, 1953).

[22] This discussion draws chiefly on J.K. Galbraith, *supra note 13* at 33. See also P. Marris & M. Rein, *supra* note 8 at 10; Hubert H. Humphrey, "The War on Poverty" in Everett, *supra* note 2, 6 at 7. S. Rottenberg, "Misplaced Emphases in Wars on Poverty" in R.O. Everett, *supra* note 2, 64at 64; T. Sanford, "Poverty's Challenge to the States" in R.O. Everett, *supra* note 2, 77; R.H. Leach, *supra* note 5 18; and R. Lubove, ed., *Poverty and Social Welfare in the United States* (New York: Holt, Rinehart and Winston, 1972).

[23] The passage of the Employment Act of 1946 60 Stat. 23, as amended, 15 U.S.C. ss 1021-24 (1964) is often taken as a manifestation of this insight. See C.H. Madden, *supra* note 2; Hubert H. Humphrey, *supra* note 22; and M. Harrington, *supra* note 15 180 at 181.

[24] This discussion of the politics of poverty is drawn chiefly from R.A. Cloward, "The War on Poverty - Are the Poor Left Out?" in C.I. Waxman, *supra* note 15, 159; W.C. Haggstrom, "The Power of the Poor" in C.I. Waxman, *ibid.*. at 113; B.M. Beck, "How Do We Involve the Poor?" in C.I. Waxman, *ibid.*. at 268 and E. Raab, "What War and Which Poverty?" in C.I. Waxman, *ibid.*. at 229.

[25] Saul Alinsky's works enjoyed a revival during the early War period. See D.P. Moynihan, *supra* note 1 at 185-186.

[26] D.P. Moynihan, *supra* note 1 at 3.

[27] The discussion of Ford's program is drawn chiefly from P. Marris & M. Rein, *supra* note 8, J.L. Sundquist, *supra* note 12; and D.P. Moynihan, *supra* note 1.

[28] J.L. Sundquist, *supra* note 12 at 13.

[29] J.L. Sundquist, *supra* note 12 at 19.

[30] This arose at least in part from the Foundation's concern about its proper role in a democratic society. D.P. Moynihan, *supra* note 1 at 40.

[31] The discussion of Mobilization for Youth is drawn chiefly from J.L. Sundquist, *supra* note 12; D.P. Moynihan, *supra* note 1; P. Marris & M. Rein, *supra* note 8; and C. Grosser, "The Need for a Neighborhood Legal Service and the New York Experience" in J. Stats, ed., *The Extension of*

Legal Services to the Poor (Washington, D. C.: U. S. Department of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 73.

[32] P. Marris & M. Rein, *supra* note 8) at 19.

[33] See J.L. Sundquist, *supra* note 12 at 10 for reference to sick communities.

[34] See D.P. Moynihan, *supra* note 1 at 56-57 for a comparison of the MFY plan and the EOA of 1964.

[35] See J.L. Sundquist, *supra* note 12 at 11-12 and 19; S. Kravitz, "The Community Action Program - Past, Present, and Its Future?" in J.L. Sundquist, ed., *On Fighting Poverty: Perspectives From Experience*, vol. 2 (New York: Basic Books, 1969) 52 at 59-61; P. Marris & M. Rein, *supra* note 8 chiefly 56-119 and 139-207.

[36] D.P. Moynihan, *supra* note 1 at 42.

[37] The discussion of Kennedy's role is drawn chiefly from J.L. Sundquist, *supra* note 12; D.P. Moynihan, *supra* note 10 3; P. Marris & M. Rein, *supra* note 8; D.P. Moynihan, *supra* note 1; D. Cater, "The Politics of Poverty" in C.I. Waxman, *supra* note 15, 101; and S.A. Levitan, *supra* note 5.

[38] J.L. Sundquist, "Introduction" in J.L. Sundquist, ed., *On Fighting Poverty: Perspectives from Experience*, vol. 2 (New York: Basic Books, 1969) 3 at 3.

[39] 75 Stat. 47 (1961), as amended, 42 U.S.C. ss 2501-25 (1964).

[40] 76 Stat. 23, as amended, 42 U.S.C. ss 2571-2620.

[41] 77 Stat. 411, as amended, 20 U.S.C. ss. 15aa, bb, aaa, 35-25n (1964).

[42] See D.P. Moynihan, *supra* note 10 at 9-12.

[43] J.L. Sundquist, *supra* note 12 quoting Johnson's State of the Union Message. Also W.C. Selover, "The View from Capitol Hill: Harassment and Survival" in J.L. Sundquist, *supra* note 12, 158

[44] The Economic Opportunity Act of 1964, 78 Stat. Public Law 88-452 § 2 (1964) [hereinafter the .EOA].

[45] See B.A. Weisbrod, "Introduction - The Economics of Poverty: An American Paradox" in B.A. Weisbrod, ed., *The Economics of Poverty: An American Paradox* (Englewood Cliffs: Prentice-Hall, 1965) 1.

[46] The EOA was only one piece of legislation through which welfare programs were supported. See S.A. Levitan, *supra* note 5 at 9-11; R.O. Everett, "Foreword" in R.O. Everett, *supra* note 2, 1; J.L. Sundquist, *supra* note 12, at 30; D.P. Moynihan, *supra* note 1 at 24 and H. Humphrey, *supra* note 22.

[47] The EOA Title VI, Part B, Sec. 611 laid out the coordination function of the OEO. See also J.A. Kershaw, *Government Against Poverty* (Washington, D.C.: The Brookings Institution, 1970) at 24; M.S. March, "Coordination of the War on Poverty" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 114 and S.A. Levitan, *supra* note 5 at 49-58.

[48] J.A. Kershaw, *supra note 47* at 24.

[49] See A. Yarmolinsky, "The Beginnings of OEO" in J.L. Sundquist, ed., *On Fighting Poverty: Perspectives from Experience*, vol. 2 (New York: Basic Books, 1969) 34 at 36. See also J.A. Kershaw, *supra* note 47 at 24 and J.L. Sundquist, *supra* note 12 at 27.

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[50] N.d. Katzenbach, "Address" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D.C.: U. S. Dept of Health, Education and Welfare: Office of Juvenile Delinquency and Youth Crime, 1964) 202 at 14.

[51] EOA *supra* note 23 § 2.

[52] EOA *supra* note 23 Title II, Part A, § 205 (a); Title VI, Part B, § 601-602.

[53] EOA *supra* note 23; *Economic Opportunity Amendments Act* of 1965 Public Law 89-253, 79 Stat. 973-79, Title II § 216.

[54] Legal Services were introduced in November 1965 through *Economic Opporunity Amendments Act of 1965, ibid.*. §. 215. They were revised in *Economic Opportunity Amendments of 1967*, Public Law 90-222, 81 Stat. 672-728.

[55] This term is attributed to President Johnson. See B. Carter, "Sargent Shriver and the Role of the Poor" in C.I. Waxman, *supra* note 15, 207. For descriptions of the federal role, see also S.A. Levitan, *supra* note 5 at 63; J.L. Sundquist, *supra* note 12 at 27; and R.H. Leach, *supra* note 5.

[56] In the absence of explicit roles for local governments, communities were to work out their own arrangements, though they were not to be the "tools" of city hall. See J.G. Wofford, "The Politics of Local Responsibility: Administration of the Community Action Program - 1964-1966" in J.L. Sundquist, *supra* note 12, 70 at 75-77. See also R.H. Leach, *supra* note 5 at 30. See T. Sanford, "Poverty's Challenge to the States" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 77 regarding the need to clarify the role of the states.

[57] See C.H. Madden, *supra* note 2 at 59 for a brief discussion of labour's response.

[58] E.g. *EO Act supra*, note 23, Title II, Part C re: personal participation; Title VI Part A, § 603 re: use of volunteers; and Titles I or II § 219. Title IV provided a way to "mobilize...private as well as public managerial skills and resources." § 401.

[59] P. Marris & M. Rein, *supra* note 8 at 208. Also D.P. Moynihan, *supra* note 1 at 94.

[60] Jack Conway was Deputy Director of the OEO and a former United Automobile Workers official. D.P. Moynihan, *supra* note 1 at 95.

[61] See D.P. Moynihan, *supra* note1 at 97.

[62] For discussions of neighbourhood centres, see M.S. March, *supra* note 47, 114 at 134; J. Handler, *Neighborhood Legal Services - New Dimensions in the Law* (Washington: U. S. Department of Health, Education, and Welfare, 1966) at 4, 58, and 61; R.M. Kramer, *Participation of the Poor: Comparative Community Case Studies in the War on Poverty* (Englewood Cliffs: Prentice-Hall, Inc., 1969) at 222; and W. Wells, "The Boston Neighborhood House Proposal" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Dept of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 81 81 at 83.

[63] E. Johnson, Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974) at 50 quoting *The Chicago Daily News*, November 18, 1964.

[64] R.A. Levine, *supra* note 5 at 161-163. R.A. Cloward, *supra* note 24 at 167.

[65] The media gave Shriver this nickname because of the broad discretion he had in running the Office. See R.H. Leach, *supra* note 5 at 33. See J.L. Sundquist, *supra* note 12 for a discussion of the Director's discretion. See A. Yarmolinsky, *supra* note 49 at 47 for Shriver's retort that he only wanted to be a sargeant.

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[66] D.P. Moynihan, *supra* note 1 at 3 and again at 100 quoting Sergeant Shriver.
[67] See J.G. Wofford, *supra* note 56 and J.A. Kershaw, *supra note 47* at 54.
[68] See M.S. March, *supra* note 47 114 at 134.
[69] J.A. Kershaw, *supra note 47* and D.P. Moynihan, *supra* note 1.
[70] See B.M. Beck, *supra* note 24, 24, 268 at 280 and Metropolitan Applied Research Center, Inc., *A Relevant War Against Poverty: A Study of Community Action Programs and Observable Social Change* (New York: Social Dynamics Research Institute of the City College of the City University of New York, 1968) 88-106.
[71] N. Glazer, "The Grand Design of the Poverty Program" in C.I. Waxman, *supra* note 24, 281 at 287.
[72] E. Raab, *supra* note 24 at 239. See also N. Gilbert, *Clients or Constitutents* (San Francisco: Jossey-Bass Inc., 1970) at 26.
[73] See J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington: U.S. Dept of Health, Education, and Welfare, Welfare Administration, Office of Juvenile Delinquency and Youth Development, 1964); M.R. Wolf, ed., *National Conference on Law and Poverty* (Washington, D. C.: U. S. Dept of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1965) and J.E. Carlin, J. Howard & S.L. Messinger, *Civil Justice and the Poor* (New York: Russell Sage Foundation, 1967) for the kinds of problems early nghbourhood legal services addressed.
[74] See EOA Title II, Part A, Sec 201-211.
[75] This discussion is drawn from D.P. Moynihan, *supra* note 1; Metropolitan Applied Research Center, Inc., *supra* note 70); J.G. Wofford, *supra* note 56; W.C. Haggstrom, *supra* note 24; E. Raab, *supra* note 24; and R.A. Levine, *supra* note 5.
[76] R.A. Cloward, *supra* note 24 at 165; S.A. Levitan, *supra* note 5 at 44; A. Yarmolinsky, *supra* note 49 at 48-49 and W.C. Haggstrom, *supra* note 24 at 130.
[77] See R.A. Cloward, *supra* note 24 at 161; B.M. Beck, *supra* note 24 at 270-271; G.H.J. Esser, *supra* note 9 ; and C.H. Madden, *supra* note 2.
[78] N. Glazer, *supra* note 71 at 285.
[79] See W.C. Haggstrom, *supra* note 24 at 124.
[80] R.A. Cloward, *supra* note 24 at 166.
[81] M. Rein, "Institutional Change: A Priority in Welfare Planning" in C.I. Waxman, *supra* note 15, 293.
[82] See M.I. Ginsberg & B. Shiffman, "Manpower and Training Problems in Combating Poverty" in R.O. Everett, *supra* note 2, 159 at 180-184; Metropolitan Applied Research Center, Inc., *supra note 70*)at 48.
[83] See L.L. Bennett, "Paths to Mutual Understanding and Cooperation" in J. Stats, *supra* note 73, 154at 159 and M.I. Ginsberg & B. Shiffman, "Manpower and Training Problems in Combating Poverty" in R.O. Everett, *supra* note 2, 159 at 161-184.
[84] T.M. Berry, "Address to the National Conference on Law and Poverty" in A. Chayes & R.L. Wald, eds, *Law and Poverty 1965: Report to the National Conference on Law and Poverty, Washington, D. C., June 23-23, 1965* (Washington, D.C.: U.S. Government Printing Office, 1965) 120 at 122.

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[85] R.H. Leach, *supra* note 5 at 26 and T. Sanford, "Poverty's Challenge to the States" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 77 at 79.

[86] See Metropolitan Applied Research Center, Inc., *supra note 70*) at 55. The analysis at the time was gendered. One of the solutions to poverty was to get men working and women back in the home. Men needed work. For a boy to grow up properly he need to be usefula nd make something of himself. A girl did not. Having children was "self-justifying," like any other natural or creative act. P. Goodman, *Growing Up Absurd; Problems of Youth in the Organized System* (New York: Random House, 1960) at 13.

[87] S.D. Alinsky, "The War on Poverty - Political Pornography" in C.I. Waxman, *supra* note 15, 171 at 172 and See G. Simmel, "The Poor" in C.I. Waxman, *supra* note 15, 3.

[88] See F. Riessman, "The Strengths of the Poor" in A.B. Shostak & W. Gomberg, eds, *New Perspectives on Poverty* (Englewood Cliffs: Prentice-Hall, 1965) 40 and R.A. Levine, *supra* note 5 at 55.

[89] N. Glazer, *supra* note 71 at 288-289.

[90] See E.S. Cahn & J.C. Cahn, "Maximum Feasible Participation: A General Overview" in E.S. Cahn & B.A. Passett, eds, *Citizen Participation: Effecting Community Change* (New York: Praeger Publishers (Communicy Action Training Centre, N.J.), 1971) 9.

[91] E.S. Cahn & J.C. Cahn, *ibid.* at 71-72.

[92] D.P. Moynihan, *supra* note 1 at 9.

[93] See Metropolitan Applied Research Center, Inc. *supra note 70*) at 24-25 for a discussion of this process.

[94] D.P. Moynihan, *supra* note 1 at 42.

[95] D.P. Moynihan, *supra* note 1.

[96] D.P. Moynihan, *supra* at xviii and J.G. Wofford, *supra* note 56 at 98.

[97] N. Glazer, *supra* note 71 at 287. See also C.I. Waxman, "Introduction" in C.I. Waxman, *supra* note 15, xi.

[98] W. Haddad, "Mr. Shriver and the Savage Politics of Poverty" (1965) Harper's Magazine 43 at 45.

[99] For a discussion of local responses, see W. Stringfellow, "The Representation of the Poor in American Society: A Subjective Estimate of the Prospects of Democracy" in R.O. Everett, *supra* note 2, 142; S.D. Alinsky, *supra* note 37, 171 at 172; R.A. Cloward, *supra* note 24 at 161-163; C.E. Silberman, "The Mixed-Up War on Poverty" in C.I. Waxman, *supra* note 15, 81 at 85.

[100] Robert A. Levine cites the failure of CAA's to get established in Los Angeles as a factor in the Watts riot in the summer of 1965. R.A. Levine, *supra* note 5 at 56. See also J.H. Wheeler, "Civil Rights Groups - Their Impact upon the War on Poverty" in R.O. Everett, *supra* note 2, 152 at 158 for a brief comment on the Watts riots. For a fuller, case study discussion of the Los Angeles situation, see D.R. Marshall, *The Politcs of Participation in Poverty* (Bereley: University of California Press, 1971).

[101] The discussion on radicalization draws on D.P. Moynihan, *supra* note 1.

[102] D.P. Moynihan, *supra* note 1 at 112.

[103] B.M. Beck, *supra* note 24 at 271.

[104] D.P. Moynihan, *supra* note 1 at 94.

[105] R.A. Cloward, *supra* note 24 at 169. See also S. Rottenberg, *supra* note 22 at 68-71.

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[106] R.A. Cloward & F.F. Piven, "The Weight of the Poor: A Strategy to End Poverty" in C.I. Waxman, *supra* note 15, 311 at 317-318.

[107] R.A. Levine, *supra* note 5 at 53. S. Shriver, "Welcome Address" in *Conference Proceedings: National Conference on Law and Poverty* (Washington: U. S. Government printing Office, 1965) ix at xi gives a slightly higher figure.

[108] This discussion draws on R.A. Levine, *supra* note 5 at 53-69; R.H. Leach, *supra* note 5 at 31; D.P. Moynihan, *supra* note 1 at 104-106, 132-134 and 156; and H. Humphrey, H., *supra* note 22, at 31. M. Kempton, "When You Mobilize the Poor" in H.H. Meissner, ed., *Poverty in the Affluent Society* (New York: Harper & Row, 1966) 228; R.A. Cloward, *supra* note 24 at 164, and P. Marris & M. Rein, *supra* note 8 at 178-181; J.G. Wofford, *supra* note 56 at 99-100;

[109] See R.A. Levine, *supra* note 5 at 62-66; J.H. Wheeler, "Civil Rights Groups - Their Impact upon the War on Poverty" in R.O. Everett, *supra* note 2, 152 at 154-156; C.I. Waxman, "Introduction" in C.I. Waxman, *supra* note 15, xi at xiii; C.E. Silberman, "The Mixed-Up War on Poverty" in C.I. Waxman, *supra* note 15, 81 at 84-85; B. Carter, *supra* note 55. See also D.P. Moynihan, *supra* note 1 at 145.

[110] See D.P. Moynihan, *supra* note 1 at 143. See L.A. Coser, "Social Conflict and the Theory of Social Change" in C.I. Waxman, *supra* note 15, 64.

[111] J.L. Sundquist, *supra* note 12 at 30.

[112] See J.O. Blackburn, "The War in Viet Nam and the 'War' on Poverty" in R.O. Everett, *supra* note 2, 39. W.C. Selover, "The View from Capitol Hill: Harassment and Survival" in J.L. Sundquist, *supra* note 12, 158.at 173; J.A. Kershaw, *supra* note 47 at 55; D.P. Moynihan, *supra* note 1 at 151-154; and R.A. Levine, *supra* note 5 at 73

[113] Shriver was booed out of the Annual Meeting of the Citizens' Crusade Against Poverty held in Washington in April 1966. Metropolitan Applied Research Center, Inc., *supra* note 70) at 194-198. See also A. Kopkind, "By or for the Poor?" in C.I. Waxman, *supra* note 15, 225 at 227; and B. Carter, *supra* note 55 at 216.

[114] See C.H. Madden, *supra* note 2 at 60 and G.H.J. Esser, "The Role of a State-Wide Foundation in the War on Poverty" in R.O. Everett, *supra* note 2, 90 at 97.

[115] See L.H. Keyserling, *Poverty and Deprivation in the United States - The Plight of Two-fifths of a Nation* (Washington, D.C.: Conference on Economic Progress, 1962); B.J. Wattenberg, *This U. S. A.* Doubleday, 1965) 130-151; Orshansky, "Counting the Poor: Another Look at the Poverty Profile" (1965) Social Security Bull. 3; R.D. Friedman, *Poverty: Definition and Perspective* 1965) and C.H. Madden, *supra* note 2 at 47.

[116]Galbraith's analysis of the types of poverty was challenged by R. Lampman, *Low-Income Population and Economic Growth* (Washington: Joint Economic Committee of the 86th Congress, 1st Session, December 16, 1959). Lampman was a member of the staff of the Council of Economic Advisers during Kennedy's presidency and was influential in the development of the War on Poverty. Harry G. Johnson offers another typology of poverty in H.G. Johnson, "Poverty and Unemployment" in B.A. Weisbrod, *supra* note 45, 166. See also H. Caudill, "Reflections on Poverty in America" in A.B. Shostak & W. Gomberg, *supra* note 88, 3 See also T. Sanford, "Poverty's Challenge to the States" in R.O. Everett, *supra* note 2, 77.

[117] See, for example, M. Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962); H.J. Gans, "Some Proposals for Government Policy in an Automating

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society" in A.B. Shostak & W. Gomberg, *supra* note 88; A.B. Shostak, "Birth Control and Poverty" in A.B. Shostak & W. Gomberg, *supra* note 88, 50 and I. Sclanders, "Bonus for Babies" in A.B. Shostak & W. Gomberg, *supra* note 88, 58.There was also a line of argument that said that government caused poverty. See S. Rottenberg, *supra* note 22and C.B. Carson, *The War on the Poor* (New Rochelle: Arlington House, 1969).

[118] See *supra* note 45 1 at 5-27 for a discussion of this problem. See also S. Rottenberg, *supra* note 22.

[119] See J.L. Sundquist, *supra* note 12 at 30. See also A. Yarmolinsky, *supra* note 49 at 39.

[120] E. Johnson, Jr., *supra note 63*at 39 and J.L. Sundquist, *supra* note 12 at 29.

[121] The discussion in this paragraph is drawn from J.L. Sundquist, *supra* note 12 at 22-29; S.A. Levitan, *supra* note 5; D.P. Moynihan, *supra* note 1; J.G. Wofford, *supra* note 56; and J.A. Kershaw, *supra note 47*.

[122] R.A. Levine, *supra* note 5; S.A. Levitan, *supra* note 5 at 39; J.L. Sundquist, *supra* note 12 at 27 and 31; S. Kravitz, *supra* note 31 52 at 65; D.P. Moynihan, *supra* note 1 at 4; J.A. Kershaw, *supra note 47*; and. A. Walinsky, "Keeping the Poor in Their Place: Notes on the Importance of Bing One-Up" in A.B. Shostak & W. Gomberg, *supra* note 88, 159.

[123] C.H. Madden, *supra* note 2. Madden was the Director of Research, Task Force on Economic Growth and Opportunity, Chamber of Commerce of the United States in 1966.

[124] C.I. Waxman, "Introduction" in C.I. Waxman, *supra* note 15, xi at xv.

[125] S.D. Alinsky, *supra* note 37, 171 at 179.

[126] See T.M. Berry, *supra* note 84 regarding the application of CAP policies to legal services projects.

[127]The cause of the War's failure is much discussed. S.A. Levitan, *supra* at 317; S. Kravitz, *supra* note 31 52 at 65; A. Walinsky, *supra* note 122 at 160.

Chapter 3 – Law and Social Action

Being a fight against injustice, the War on Poverty was a natural platform for testing the capacities of the legal system to respond to the grievances of the underdog. It offered lawyers a goal worthy of the best and the brightest and provided them with the resources to take that goal seriously. In the context of the War's Community Action Program, lawyers had a license to try their hands at social engineering – at using law as an instrument of social policy. In ridding the country of poverty, lawyers were to fundamentally alter the relationship of the poor to the law by restoring their confidence in the rule of law. This in turn would give democracy new meaning and vibrancy. That mandate gave these new poverty warriors the opportunity to engage in a form of radical politics that has, perhaps, never before been available. Lawyers responded to this challenge by the thousands. New legal services were established in city after city across the nation. Lawyers developed new arguments, new litigation techniques, and new law in promoting the rights of their poverty-stricken clients. Criminal law, family law, administrative law, and constitutional law acquired new dimensions and significance. Class actions and test cases became powerful weapons for fighting for the dispossessed. In the process, a new area of practice – poverty law – became established, an amalgam of laws and strategies to expand the entitlements of the poor. Case by case, victory by victory, champions of the poor transformed the landscape of the law. Community legal education ensured that the poor took advantage of their new allies.

While lawyers sallied forth to do justice with new fervour, they continued to maintain their traditional roles and relationships. In the law firms of the poor like those of the rich, lawyers were still masters and their clients' interests still paramount. This model ensured the poor the unfettered attention of their lawyers and the best that the traditions of modern legal practice afforded. It may be that this was the only model under which the Legal Services Program (LSP) could have thrived at the time. It certainly enabled neighbourhood legal services to make considerable gains on behalf of the disadvantaged in the courts. It was also a model that Canadian lawyers could easily adapt to their more conventional law offices in provinces where the American-style neighbourhood legal aid structure was not adopted. But it was a model that was flawed. If leaving lawyers in control of legal services was a strength of the LSP, it was also a weakness.

The neighbourhood legal service (NLS) concept reflected many of the features of the new social reform paradigm. It relied on professional reformers, shared the view that the problems of the poor had political aspects, referenced democracy in legitimizing its services, and contained some of the characteristics of the community action model of reform. NLSs were independent of the local government processes, they undertook a diversity of law-related activities, and were strident in their advocacy of their clients' interests. At the same time, NLSs were not pure models of the new paradigm. They emphasized different aspects of democracy than the paradigm promoted, resisted involving stakeholders, and were oblivious to matters of process. In invoking their time-honoured right to professional autonomy, lawyers maintained a stranglehold on the use of law as a reform strategy. While lawyers might have been well positioned to consider a case in its legal context, they had no monopoly on understanding the ramifications for the broader community of the arguments put before the courts, the strategies engaged in the case, or the broader impact of the decision. An incremental gain in the courts could carry with it huge losses in the community, whether because the narrow interest of the case undermined the interests of a class, or because the case engendered a backlash. Lacking a process for locating their work in a broader reform strategy, neighbourhood lawyers were less effective than they might have been. Opening their practice up to that experience would have required lawyers to admit to a different understanding of the nature of law than they possessed.

What matters to public legal education in this experience is, first, that in the War on Poverty, a new form of legal service was developed that gave rise to the practice of community legal education. Second, this new form of legal service had radical goals and aspirations that extended to its community legal education services. Third, the understanding of law and lawyering that underlay the approach adopted by the new service was particularly constraining for the development of radical forms of community legal education. That understanding not only limited the kinds of educational activities that were undertaken but also tended to trivialize the practice of community legal education, often reducing it to a public relations effort. But, as with the legal services movement more broadly, the War must first be credited with providing the opportunity to get community legal education services launched.

THE EMERGENCE OF NEIGHBOURHOOD LEGAL SERVICES

Much of the course for the new legal services was set before the War on Poverty was declared. Early community service centres had already discovered that the poor needed lawyers to help redress the many grievances they experienced at the hands of those they depended on for the necessities of life. Projects, such as New York's Mobilization for Youth, had come to see that traditional methods of social work might well be enhanced through the use of law and legal advocacy. If legal assistance could be brought to bear on a troublesome situation early enough, perhaps, a legal problem might be averted altogether. Cautious scepticism was also beginning to be expressed with respect to the fairness of the civil law process – perhaps it might be "unfairly weighted" against the poor.[1] Activists did not see traditional forms of legal aid and public defender services as being adequate to meet the needs of the poor.[2] Those services were not only highly restrictive as to the types of cases they could take, they were too locked-in to their traditional ways of operating. Conducting themselves like a charity, they were paternalistic in their attitudes and had little impact on the conditions of the poor. While the proper defence of the criminally accused was essential, it was only palliative. In the few situations where civil legal aid was available, it treated only the symptoms of poverty, not its causes. Gross under-funding aside, these types of legal aid would not effect the social change that reformers were seeking. So early CAAs began to imagine alternatives.

In conceiving of a legal service that would meet the needs of their communities, reformers believed that the problems of the poor stemmed from a variety of causes that were seldom entirely amenable to legal solutions.[3] Rather, they expected that legal action would more often be a tactic integrated into a larger strategy that involved using a host of services. In this way, the poor client would be treated as a whole person, not as a series of separated, isolated problems. Since many of the problems of the poor were really socio-legal, lawyers needed to keep the broader social impact of their clients' cases in mind. The staff of legal services needed to be sensitive to and identify with the community's needs and interests Lawyers needed to get involved in other services that were also meeting the neighbourhood's needs and to integrate legal work with that of non-legal services. The poor client would need to be able to find the lawyer easily and at times that did not conflict with other pressing demands, such as a job or schooling. Since, the poor were not usually mobile, were reluctant to travel to unfamiliar sections of the city, and were deterred by long waiting lines for service, legal services needed to be available within the communities they were meant to serve. CAAs recognized that lawyers would have to begin by making their services known to the poor and by explaining the type of help lawyers could provide. Lawyers would have to counter prospective clients' reticence to use legal remedies, their fear of reprisal for doing so, and the cynicism, hostility, and contempt derived from their experience that the law worked only against them, never for them.

Legal services for the poor needed to be not only physically but psychologically accessible. More yet was required. Since the poor might not even realize that many of their problems had a legal aspect, NLSs would have to start by educating them about the law.

Initial efforts at creating new legal services were tentative and exploratory. One of the first CAAs to introduce legal services was Community Progress, Inc., a pilot multiservice neighbourhood centre in New Haven funded under the Ford Foundation's grey areas program. The mandate of the legal program was simply "to diagnose, refer, and coordinate"[4] the legal problems of the poor. Within a few years, three other neighbourhood legal services (NLSs) joined the experiment,[5] funded by private foundations, the federal government, state legislatures, and cities.[6] Mobilization for Youth in New York was one of these. The major activities of its legal unit were the "provision of referral and preventive legal services; legal orientation of lay community leaders, professional staff, and clients; and use of the law as an instrument of social change."[7] These first NLSs were small offices staffed by two to five lawyers, usually assisted in some way by social workers, who delivered a broad range of legal services without charge to members of poor communities.[8] Offices were located where they could easily be accessed by the poor – in the CAA's office, neighbourhood multiservice centres, or community schools. Exactly how those offices related to traditional legal aid and to social services in their neighbourhoods varied. How and why legal services should intervene also varied, but, in general, the object of NLSs was to use the law in combination with other services, to alleviate the depressed economic and social conditions and to relieve the sense of hopelessness that characterized their target neighbourhoods.[9]

As expected, the kinds of problems these new legal services encountered went beyond those found in more conventional practices.[10] For example, in addition to the usual sorts of family law problems related to divorce, neighbourhood clinics had to deal with child welfare problems. The poor also needed legal assistance in dealing with the proliferation of government obligations related to every aspect of their lives, from welfare, to housing, employment, youth crime, education, health, and safety that were at least nominally designed to relieve the harsh conditions of their poverty. Lawyers contested rulings taking people off welfare, suspending children from school, or rendering a person ineligible for unemployment insurance. They got heat turned on in apartments in the winter, eliminated rats from slum tenements, blocked illegal evictions, and got public housing tenants reinstated. Lawyers made the tactic of rent strikes work. Constitutional challenges were made against 'midnight raids' by welfare workers looking for evidence of fraud, ceilings on welfare rates, grounds for refusing assistance, and delays, delays, delays. Then there were the consumer problems experienced by the poor. High pressure and exploitive sales tactics, easy credit, and unfair collection practices often resulted in the poor acquiring debts out of any proportion to the goods or services they had received. To these legal needs were added increased demand for criminal representation arising from the *Gideon* decision of the Supreme Court of the United States extending the right to counsel to poor defendants.[11] The early work of these services revealed that the poor needed the full range of legal services to bear on their grievances, to advance their group interests, and to educate them and those who worked with them.

When the inclusion of neighbourhood legal services in the strategy for the War on Poverty was first proposed by Associate Justice Arthur Goldberg to President Johnson and Sergeant Shriver, the idea was ignored as not fitting the War's bias toward economic betterment.[12] It took an article written by Jean and Edgar Cahn published in the Yale Law Journal in 1964[13] to give the idea sufficient clarity and exposure for the use of legal services in the War effort to be taken seriously. In their persuasive article, the Cahns legitimized the entry of the legal profession into the

War, linking legal services to the rhetoric of dignity, empowerment, democracy, and the reform of social institutions. The Cahns' message was simple: neighbourhood lawyers could provide a voice for the poor in the design and implementation of those programs.[14] Fearing the War would succumb to the usual inefficiencies and imperatives of bureaucracies, the Cahns argued that through lawyers, the poor would bring a needed "civilian perspective; one of dissent, of critical scrutiny, of advocacy, and of impatience."[15] For the Cahns, joining the war constituted a noble cause: eliminating poverty encompassed spiritual as well as physical subsistence, "civic as well as economic self-sufficiency."[16] Giving the poor their voice would not only prove invaluable in designing effective programs but would enhance the dignity and respect of the poor. More important, they believed that legal services would empower and enfranchise the poor as citizens in a democracy.

This enfranchisement was to extend into new domains. The Cahns recognized the growing importance of government bureaucracies in redistributing the country's resources[17] and drew attention to the need to make these bureaucracies accountable. The poor needed some means of influencing all the agencies that made decisions about their lives, particularly those that distributed income and opportunity in their community. The Cahns invoked a broad definition of the law, stretching it to cover all types of public decision-making. The Cahns argued that the poor needed a means of being represented in all forums of decision-making whether elected or not, whether formal or informal. This whole body of law needed to be reviewable. But the process of enfranchisement could not be one of purely electoral politics. Formal democracy failed the poor. It was too complex, too demanding, and too remote. Other ways were needed to amplify the voice of the poor. In this sense, the War on Poverty put the practicality of democracy to its ultimate test. The Cahns argued that lawyers could come to the rescue by speaking for the poor. Lawyers could make public agencies submit to the rule of law.[18]

The Cahns' article was much discussed in Washington and, soon after the Office of Economic Opportunity was established, Sargent Shriver formed a special task force to assess the role that lawyers might play in the antipoverty effort.[19] Before long, the idea that legal services had a vital part to play in the anti-poverty effort began to catch on in government circles.[20] Senator Robert Kennedy, Attorney General of the United States, gave the proposition prestige in his address to law students at the University of Chicago on Law Day, 1964. In a speech drafted by Edgar Cahn, Kennedy articulated the basic rationale and agenda for a legal services program. He argued that lawyers needed to examine their roles with respect to "problems which are central to our society but which exist on the fringes of the law."[21]

> There is a great need for America to live up to its political promise of civil rights for all its citizens. But there is a parallel need for America to live up to the economic promise of **social** rights, of social – and thus equal – justice under law.[22]

His agenda contained the major themes that shaped discussions about the new approach to legal services for the poor.

- First, the law was unnecessarily complex and lawyers would have to eliminate some of those intricacies.
- Second, lawyers needed to assert the rights of the poor and eliminate the fact of two systems of law – one for the rich and one for the poor.
- Third, lawyers need to practise preventive law, counselling the poor about situations in which they might be victimized and exploited.
- Fourth, lawyers needed to develop new kinds of legal rights and remedies, particularly with respect to the responsibilities of bureaucracies in dealing

> with the host of injuries that people suffer daily simply because society is so complex.[23]

While the effect of this action might be radical, all lawyers were being asked to do was apply their traditional skills on behalf of a new client group – the poor. Kennedy called on the bar to rise to this challenge.

In the fall of 1964, the Office of Juvenile Delinquency and the Welfare Administration of the U.S. Department of Health, Education and Welfare convened a conference bringing together lawyers, law students, social workers, and academics involved in the early neighbourhood legal services to discuss ways of working together better in resolving the problems of the poor.[24] At the conference, Attorney General Nicholas deB Katzenbach challenged lawyers to become involved in reversing the "life sentence of poverty"[25] that had been passed on 20 percent of the population of the United States and announced that the Office of Economic Opportunity was prepared to support new approaches to addressing the legal needs of the poor.[26] Since the organized bar had played no part in the early development of NLSs, the legal establishment was not initially invited to the conference. It was not until the popular press covered the activities of the OEO in setting up its legal services task force that the bar became alerted to the possibility of government intervention into legal aid matters. On hearing of the conference, the bar asked for, and was granted, a presence.[27] Underrepresented at the conference, the bar realized it had better get involved in this new initiative quickly before forces less sympathetic to lawyers'concerns took over. Losing no time, in February 1965, the American Bar Association passed a resolution acknowledging the bar's "urgent duty to extend and improve existing services."[28]

By June, 1965, the OEO published tentative guidelines for legal services proposals,[29] just in time for the 1965 *National Conference on Law and Poverty*. This second conference was convened to bring together leaders of the legal profession from all sectors of the country to convince them that their help was critical to finding ways to use the law to reverse poverty in America.[30] Unlike its predecessor, this was a high profile event showcasing prominent leaders of the legal community including the Vice-President of the United States, the Attorney General of the United States, the President of the American Bar Association, and the President of the National Legal Aid and Defender Association. Shriver maintained that the conference reflected the growing awareness among the legal community that the poor were being deprived of their rights, that effective legal services had not been readily available to them, and that it was the legal profession's responsibility to attend to these deficiencies. Along with this awareness was an appreciation that legal services could not only get poor people out of a particular jam, but get them out of poverty once and for all.[31] At least rhetorically, the legal profession signed up for duty.

Once accepted, neighbourhood legal services quickly assumed pride of place in the war effort.[32] According to Shriver, justice had been first for the framers of the American Constitution and justice would be first for the Office of Economic Opportunity.[33] Lawyers would be of singular importance in attacking the causes and effects of poverty. Only with lawyers available to counsel and advocate for the poor could equal opportunity or equal justice be achieved.[34] NLS's would be the "heavy artillery"[35] of the war, and lawyers, the "shock troops."[36] By 1966, the National Program to Provide Legal Services to the Poor was formally established under amendments to the *Economic Opportunity Act 1966*[37] with the mandate to further "the cause of justice among persons living in poverty."[38] The rationale for the program was to be a means to establishing the rule of law – "that ordered quest for dignity, for justice, and for opportunity – which is the central concern of society today."[39]

That sweeping mandate provided tremendous scope to local NLSs which undertook whatever initiatives their particular founders, boards and executive directors thought appropriate for their communities.[40] They provided direct advice and representation to eligible individuals and organizations, provided rehabilitation services for offenders, acted as ombudsman for the poor, undertook law reform initiatives, engaged in community organizing, stimulated and supported community economic development activities, conducted educational projects, and trained lawyers, investigators and non-professional people with respect to poverty law matters. NLS did not offer just remedial services to those with problems, they offered preventative and reformative services. As Attorney General Robert Kennedy had suggested, offering such a broad range of services was not seen as particularly radical, but rather fell within the best of the lawyering tradition. Lawyers were to use their expertise on behalf of the poor and all legal means were to be brought to bear in favour of the client's interests. Lawyers were to practise law on behalf of the poor in the same way their counterparts in prestigious firms served their most prosperous clients. Within the Legal Services Program, the actions of poverty lawyers did not need to be ideologically grounded nor specially motivated any more than did the actions of a tax lawyer. Poverty lawyers did not need to believe in the reforms they were asked to advance. All that was asked for was "the same unquestioning devotion" that other lawyers provided their wealthier clients.[41]

By 1967, managing caseloads became a major problem for NLS projects and the direct representation function eclipsed all other efforts. [42] During the 1966 fiscal year, the annual budget for NLS exceeded $40 million dollars yet the legal needs of the poor were barely being addressed. This problem had to be solved if the NLS program was to effect any significant social change on behalf of the poor. Law reform provided the route out of this predicament. It was given priority for three reasons:

proper professional representation required it; efficient use of resources demanded it as a way to get at the causes of poverty, not just its symptoms; and it was a way to fight poverty that only lawyers could use. [43] Since only lawyers really understood how to make the legal system work for the poor, they could make a unique contribution to the war effort by doing so.

Though somewhat controversial, the law reform solution was politically saleable.[44] It appealed to traditional values of the legal profession, it was consistent with a general view of the function of legal aid, and it promised to deliver significant changes in the status of poor people. It also accorded with the five desired effects of the War on Poverty: increasing the amount of goods and services received by the poor, equalizing opportunities for various disadvantaged groups, enhancing the personal freedom enjoyed by the poor, increasing the participation of the poor in decision making in the private sector and among government agencies; and the peaceful and orderly handling of the grievances of the poor.[45] The main tactic adopted in law reform work was the "test case" strategy[46] which directed attention and resources to cases that had the potential of changing the law rather than simply getting individuals their due under the existing law. Community education was a second law reform tactic. By 1969, reform was the pre-eminent objective of the LSP.[47] In surviving the reordering of the priorities of the Legal Services Program, community legal education found itself in an environment that was radically activist in terms of using the law for social change but that placed the highest value on using the most highly specialized skills and knowledge of lawyers to achieve that change. Community legal education was expected to support that understanding of law's role in the War, an understanding that constrained its own potential as a catalyst for change.

Out of the melange of functions, legal problems and remedies associated with the practice of NLSs emerged a new area of practice – poverty law. Poverty lawyers were, on the one hand, legal generalists – their practice including the whole range of problems that a community might experience. To meet the demands of this practice, they needed to be well grounded in conventional legal concepts. In many respects, these new legal services assumed conventional lawyering functions in providing advice and defence assistance. On the other hand, poverty lawyers were specialists, having developed an expertise in looking at the law from the perspective of the underdog and a facility for recasting those concepts to make room for their clients' interests. They were skilled researchers, analysts, strategists, negotiators, opportunists, innovators, improvisers, and magicians who sought out little used legal techniques, applied long forgotten law, bullied the bullies, took on city hall, and generally made something out of nothing on behalf of their clients. Poverty lawyers carried out these functions in unconventional venues as they began challenging the administrative rulings of bureaucracies; intervening on behalf of youth in their dealings with authorities, notably the police; educating the community about the law; and effecting broader social change. These new activities were seen as contentious and potently radical. In asserting the rights of the poor against those who were richer, more powerful, and better organized, legal services were both advancing the ideals of democracy and threatening the status quo as much as any protest march, boycott, or petition.[48]

THE ROLE OF THE LAW SCHOOLS

Some law schools were actively involved in serving the poor before war broke out. In the early 1960s, the Ford Foundation provided $800,000 to the National Council on Legal Clinics to develop education on professional responsibility and to establish experimental student legal clinics.[49] Law students had already organized the Law Students' Civil Rights Research Council to provide legal services in slums in Northern cities and to civil rights workers in the South. Boston University, which had a long tradition of interest in the legal needs of indigents, provided a voluntary student defender program in the Municipal Court. The participation of these students had been specifically provided for by the Rules. At the time, criminal law and family law were considered peripheral to the curriculum at some law schools because they were presumed to be non-remunerative. To partially fill the void, the University of Georgetown Law Centre established a graduate program to prepare students to practice criminal law more competently. Law schools also played instrumental roles in the development of the pilot NLSs. When the Ford Foundation funded Community Progress, Inc., it was a professor of the Yale Law School who formulated the rationale for its legal services unit. Yale law students, who had been providing legal aid to New Haven's poor since the 1920s, became involved in the new neighbourhood services and a central criminal law office. Members of the faculties of law at both Columbia University and New York University Law School served on the advisory committee to the Legal Services Unit for Mobilization for Youth; and Boston University, Harvard, Suffolk, and Portia law schools all participated in Boston's Unified Legal Service program launched late in 1964. Indeed, law professors were on the advisory boards of all four pilot NLS projects.

The 'sixties' brought these interests into the mainstream of the life of the law schools.

> The war in Vietnam, racial explosions in the ghettos, and the growing visibility of unjustified economic, social, and sexual inequality caused a stirring from which law schools were not exempt. Law students began questioning the relevance of their courses that aimed primarily toward the service of the existing social and economic order and ignored the most pressing problems of the day. Many students wanted legal careers more directly linked to their values and idealism.[50]

Once War was declared, law students and faculty were needed to help lawyers in serving the poor and in educating social workers, neighbourhood aides, and others in the legal implications of their jobs. Students were seen as particularly valuable in researching little known areas of the law, like welfare and tenant rights in support of law reform efforts. Perhaps most important, law schools were needed as a source of new ideas essential to keeping the legal services programs vital. Law schools were pressured to produce a "new breed" of lawyers[51] that would serve the poor, whether as criminal lawyers or staff for neighbourhood law offices and legal aid services. Law schools were also urged to use their prestige and expertise to bring about legislative reform favourable to the poor and to persuade local bar associations to set up legal services programs.

In response to these pressures, law schools took steps to make legal education better fit the times. Conceding that the curriculum traditionally emphasized areas of the law which were weighted heavily toward commercial interests, law schools began introducing courses on poverty law, developing case books on professional responsibility, incorporating the law affecting the poor into other courses, and developing supplementary materials to support that integration. They provided students with the opportunity to assist lawyers in serving the poor as part of their law school education, and to undertake research, field work, clinical work, and other special projects relating to the poor law. As 'auxiliaries" in the War effort, students staffed university-affiliated legal aid clinics, helped with legal research, interviewing, and investigating in neighbourhood law offices, and worked on community legal education projects. The Wayne State University Law School was funded by the OEO to develop high school law programs. Some schools went even further. Howard University Law School launched a training institute for Washington's neighbourhood lawyers. In response to the pressing need for lawyers who understood the War's law reform strategy, the University of Pennsylvania Law School in Philadelphia developed a training program for an elite corps of Reginald Heber Smith Fellows to be sent out to NLS offices to upgrade their resources in this area. Again the Ford Foundation played a key role, funding law school legal clinics and internship programs in the administration of justice. These programs were seen to benefit both students and their clients as law schools became "recruiting centres" and "boot camps" for the poverty war. While this might be pushing the metaphor too far, certainly law schools heeded the call for justice for all.

DEVIATIONS FROM THE NEW SOCIAL REFORM PARADIGM

On the surface, NLSs seemed to be a direct representation of the new social reform paradigm. Certainly lawyers were applying the best of their professional traditions to the problems of the poor. The test case strategy in particular engaged their skills in a way for which they were uniquely qualified. But it was in the new types of analyses of the problems of the poor where lawyers perhaps made their biggest contribution. These analyses emerged from the simple discoveries of the NLSs that the poor were subject to dependencies in virtually every aspect of their lives. As lawyers began to explore these dependencies, they discovered how law operated to sustain them. It began to become evident that the law was biased in favour of particular sectors of the public and against the poor.[52] The law did not just protect those who oppressed the poor, the law itself was oppressive. The American commitment to the concept of the rule of law required that this state of inequality be changed. Ironically, the American legal system provided the means of doing so. If laws perpetuated inequity, they could also relieve it. In reforming the laws that sustained poverty, lawyers would not just give the poor a voice, they would get them out of poverty once and for all.

Joining the War meant that lawyers had to address the role that law played in maintaining inequities. They had to face the contention that law was not a neutral social institution but an agent of social policy. Using the reform paradigm's politicizing lens, lawyers scrutinized the law and found it deeply political. If law was to be used responsibly, it had to reflect the needs of all members of society, not just the interests of the majority or, worse, the most powerful. The poor were a minority group who needed protection not just from the dishonest but from the majority. This approach to reform reflected the more general analysis that social institutions, rather than helping the poor, were actually exacerbating their predicament. But it added the insight that the law upheld those institutions. Indeed, the law itself was an institution requiring change. The poor needed protection not just through the law but from the law. If necessary, law would effect a social revolution and be the site of one.

Shriver argued that failing to address social inequities would cause the poor to "despair in getting justice through the law" and violence would erupt.[53] Already American society was in a state of crisis which the law could be used to resolve peacefully.[54]

> We stand at the crossroads. In attempting to correct longstanding injustice, in attempting to alleviate human misery and eliminate poverty, we have the choice of using law as an instrument of peaceful change – as a means of both insuring domestic tranquillity and at the same time insuring to ourselves and our posterity the blessings of liberty. Or we can turn our backs on our entire legal tradition, throw the baby out with the bath, and try quicker, violent remedies that appear to work but which really destroy rather than enhance freedom, justice and respect for individuals.[55]

Though in legal aid circles, justice had long been seen to be a matter of right not charity, legal activists now proposed to transform the meaning of both 'justice' and 'right'.[56] They wanted the 'right' to justice to be a right of citizenship backed by the state, not merely a moral obligation backed by lawyers. They wanted the right to 'justice' to mean the right to a just portion of social goods, like dignity, freedom and security, not to mean merely access to the courts. The poor had **entitlements** under the law, and these legally enforceable social rights would be the main instrument of this social revolution. The needs of the poor would be reconceived as these entitlements[57] and the state of helpless dependency in which the poor found themselves would be dissolved. In this fashion, law would be used as an instrument for social change and lawyers would become social engineers. But advocates of the

LSP were careful to stress that what was being sought was social justice not socialism.[58]

This approach represented a profound shift in thinking for the legal community. Clearly a program which has the object of causing a social revolution is quite different from a program designed simply to provide a lawyer for a poor man.[59] The relationship between the poor and the rest of society would have to be changed fundamentally. The poor must be given the means to aggressively demand their share of social goods. This in turn was expected to transform the attitude of the poor toward the law. Instead of fearing and despising the law, the poor would come to respect it, to feel they have a stake in it, and that the law and society are as much theirs as anyone's. By using neighbourhood legal services the poor would learn that the law could be meaningful for them. Legal services would not just eliminate poverty; they would enable the poor to acquire the means of achieving full citizenship. This type of analysis linked legal services to the more radical intent of the War on Poverty: of getting at the root causes of poverty to eliminate them forever. Poverty had reached crisis proportion with legal as well as social, political, and economic dimensions. Eliminating poverty meant radical change for the law and legal institutions.

The insight that law was implicated in the condition of poverty represented a fundamental departure from the earlier rationale for legal aid that held that the legal problems of the poor were problems only of gaining access to the protections and remedies that the law afforded rich and poor alike.[60] According to this earlier analysis, lack of access to the law might leave the poor vulnerable to the unscrupulous but the law itself neither caused nor could it eliminate a person's state of poverty. The poor were seen to experience their problems as unfortunate individuals whom lawyers had a professional duty to help so that due process might be available to all. Legal Aid societies existed to provide a means of organizing the bar and the community to ensure the continuity and permanence of that effort. The outcome of specific cases mattered less than that people should have their day in court.

It is in the references to the principles of democracy that the concept underlying legal services began to develop fissures that would enlarge under pressure from the legal profession until the NLS model deviated significantly from the social reform paradigm. Both the legal services concept and the paradigm took the inadequacy of the formal machinations of democracy as a given: the vote did not empower the poor. But whereas under the new paradigm salvation for the poor lay in community organizing – in mobilizing the latent power of the poor – for lawyers it tended to be seen as giving the poor a voice through the rule of law – in mobilizing the neglected expertise of lawyers. Despite the real benefits of this approach, it tended to reinforce lawyers' proclivity to see cases in isolation and distracted them from pursuing more structural remedies. Since the problems of the poor tended to be systemic in nature affecting all similarly situated individuals, the case approach was at best a slow and tedious means of effecting underlying change. In settling a case for a client, a lawyer might miss the opportunity for overturning a rule or practice affecting the entire class. As the litigation strategy matured, some of these shortcomings were overcome but at a cost of further rendering legal work the exclusive purview of the expert. Legal practice of this sort might extend the benefits of democracy's rule of law to the poor, but it could hardly be characterized as effecting participation. If the burdens of democracy were overwhelming for the poor, it went without saying that the poor could never be expected to master the even greater complexities of the law and legal processes. In promoting themselves as champions of the poor, lawyers relegated the poor to the role of ineffectual by-stander.

The distancing of legal services from the poor as a practical matter was reinforced by the actions of the organized bar. When lawyers' associations discovered that the OEO was contemplating introducing a legal services program, they instigated discussions with Office representatives. For its part, the OEO recognized that it needed the bar's support if any legal services program was to be successful. To satisfy the bar that its voice would be heard, Shriver agreed to create a National Advisory Committee on Law and Poverty which would provide a means for prominent members of the Bar to work with the OEO in devising the legal services strategy. He also promised the American Bar Association that existing legal aid services would be eligible for funds under the Legal Services Program. [61] In making these concessions, the OEO ceded considerable ground over the development of the Legal Services Program to the legal profession. With this much scrutiny of the program by the private bar, NLSs could never stray far from positions and practices that conservative sectors of the profession could accept. Lawyers, not the OEO, had control of the Legal Services Program. As discussions proceeded, lawyers, not the community, would control NLSs.

Part of the Community Action Program, NLSs were required to be at least supported, if not sponsored, by a local Community Action Agency if one existed in their communities. NLSs were required to be coordinated with other antipoverty efforts and were subject to the CAA's "maximum feasible participation" policy. But, despite the endorsement by the legal community of the War's goals, the concept of community participation in running neighbourhood legal services caused great consternation. In promoting NLSs, the Cahns had argued that lawyers should remain one step removed from the War. Their caution derived, at least in part, from Jean Camper Cahn's experience as an employee of one of the pilot community services agencies.[62] In 1963 Jean Cahn was hired to staff one of the first pilot neighbourhood law services. Shortly after, she became involved in a controversial case. Her employer, Community Progress, Inc., attempted to have her withdraw from the case because her involvement went beyond the legal project's mandate which did not include direct legal assistance. When that proved impossible and the trial proceeded with Cahn acting for the defence, it attracted so much adverse community response that the legal service was suspended. While Cahn's zeal in defending a man charged in a classic 'black man rapes white women' case was no doubt exemplary at a time when such basic rights were by no means assured, her reflexive assumption of the traditional role of lawyer immediately foreclosed other options. What might have followed if other representation had been found for the accused, and Cahn had concentrated her talents in conceiving another role for her legal service? What opportunities were lost to educate the community about the importance of extending legal rights to everyone, to advance race relations, or a host of other possibilities?

A second incident of considerable concern to the profession occurred when the legal unit of Mobilization for Youth challenged the arbitrary application of local welfare abuse laws. The welfare department responded by threatening to withdraw its support for the agency. This led to an altercation between members of the MFY board and its legal unit that was resolved in favour of the lawyers' independence from interference for the board. That outcome had the effect of undermining the agency's ability to set priorities for their legal unit and to mobilize it as part of a larger strategy. As far as the Cahns were concerned, if conflicts arise between lawyers' employers and their clients, those conflicts could properly be resolved only in favour of the clients. To ensure that result would always prevail, they took the position that legal services should be independent of any other agency. Clearly, the MFY call that "all professions and disciplines participating in the program subordinate their professional standards to the common interest,"[63] went too far and had to be resisted.

If the seeds of resistance to external control were sown in the Cahns'article, theirs was a view that the organized bar whole heartedly supported. [64] At both the national and the local levels, lawyers recoiled from the suggestion that they relax their tenacious grip on their practice. They would not have non-lawyers telling them what to do. They grounded their opposition in claims to professional autonomy and technical expertise. Their autonomy was seen as vital to their professional integrity and their technical proficiency was advanced as their unique contribution to the War. They feared, as the Cahns' and others' experience attested, that lay people would not appreciate the importance of the lawyer's need to act in the client's best interests and the concomitant need for independent professional judgment in handling cases. Lawyers feared that lay people would not give enough due to the requirements of the Canon of Ethics. Furthermore, lawyers needed to be sufficiently independent from their sponsoring agency to be able to institute legal action against it, if need be. Representatives of the OEO were very sensitive to these concerns of the legal profession. When addressing gatherings of lawyers, staff were careful to note that the OEO did not have a rigid definition of the meaning of 'maximum feasible participation' and continually reassured the profession that there was no attempt from that quarter to impinge on the sanctity of the profession's independent status. After much wrangling, the issue was resolved by requiring NLS to be incorporated separately from their host CAAs and for their boards to be lawyer-controlled.[65] A clear policy was articulated as part of the guidelines for CAP-funded agencies that required NLSs to ensure the professional integrity of the lawyers working under their auspices.[66]

The struggles for independence for neighbourhood legal services at the policy and implementation levels were paralleled at the bureaucratic level. Lawyers wanted separate status for the Legal Services Program at head office. Since legal services were launched as a community action strategy and funded through CAP, head office argued that the program had to continue under CAP supervision if a coordinated, integrated attack on poverty was to be fought. Though CAP succeeded with this argument for a number of years, it was a continuing source of aggravation to the bar until 1973 when the LSP finally became a separate program.[67] At every stage and in almost every instance,[68] the profession resisted any real participation by the poor[69] in NLS projects or in the development of legal strategies. At the national level the organized profession oversaw the work of the OEO staff and at the local level, the profession controlled NLS boards. The profession would not share control over the law in any significant way, let alone surrender it altogether. They drew a clear line that mere non-lawyers were not to cross.

In giving priority to the independence of the legal profession over the participation of the poor, the legal services movement deviated sharply from the participatory democracy tendencies of the new social reform paradigm toward a more conventional notion of democracy with its insistence on the rule of law. Legal services also became prone to focusing exclusively on the legal aspect of their clients' problems rather than contextualizing them as political issues. In the process they became vulnerable to the propensity to turn issues of class into matters of technique just as Cloward had warned.

CONCLUSION

During the 1960s and 1970s, lawyers in the United States took up the challenge of using the law to rid the country of that most debilitating of injustices – poverty. They employed a new vehicle for delivering legal services to the poor, the neighbourhood legal service, to ensure that the poor received their entitlements as a matter of right not of charity. Through the Office of Economic Opportunity's Community Action Program, millions of dollars were available to establish these NLSs[70] in poor communities throughout America. These NLSs were charged with meeting the needs of their clients and with affecting the social conditions in which their clients lived. NLSs were independent organizations accountable only to their funders and clients.

In testing the capacity of the law to respond to the needs of the poor, thousands of lawyers[71] assumed the role of social activists and social engineers directly affecting the course of social policy in the country. Through their work and that of academics and law students, they uncovered the inherent biases in the law and set to work to reform them. Henceforth, the law would not just serve the rich; it would serve the poor. The poor would have access not just to procedural justice – that is, access to the courts, but access to substantive justice – access to just results.

One of the objectives of NLSs was to fundamentally alter the relationship of the poor to the law. Rather than being the enemy of the poor, the law had to become their ally. Not only was that transformation essential to the efficient administration of justice but, more fundamentally, to the preservation of the American system of "freedom under law."[72] Several strategies were adopted to earn the respect of the poor ranging from simply providing them with traditional services previously unavailable to them, to reforming the law and legal processes to better meet their needs and organizing alternative forms of economic activity. But fundamental to it all was the strategy of preventive law employed to reduce the incidence or severity of the legal problems of the poor. Although it encompassed a range of activities, preventive law soon became associated primarily with community legal education programs.

The War's debates over the meaning and implications of the concepts of 'poverty,' 'community,' 'community action agencies,' and 'participation' and the invocation of concepts of 'power' and 'democracy' had particular significance for the Legal Services Program where their application challenged fundamental beliefs about the law and lawyering. Since lawyers had little more than their traditions to draw from in addressing these issues, to say nothing of their vested interest in the outcome of the debates, the Legal Services Program added its own level of ambiguities and contradictions to those it inherited from the Community Action Program. Hidden in the powerful rhetoric and practice involved in the use of legal services was a compromise and a contradiction. In exchange for their assistance in pursuing the War's radical mandate, the OEO conceded to lawyers the right to practice law along conventional lines. Neighbourhood lawyers would have the War's strident rhetoric of participatory democracy but the Cahns' practice of sidelining community involvement. Poverty lawyers would man the heavy artillery while maintaining a civilian perspective on the War. Through a convoluted form of logic, lawyers were to amplify the voice of people on issues that were too complex for them to understand. Lawyers were to somehow stand in the place of the poor and articulate what their clients could not. In doing so, lawyers were to divine and advance an understanding of the needs of poor that eluded the other agencies that served them. By substituting themselves for the poor in this democratic sleight of hand, lawyers replaced the traditional dependency of the poor on charities and governments with a new dependency on lawyers. While poor people might take some pride in having their own 'mouthpiece,' and while having a lawyer might have more cachet than having a social worker, neighbourhood legal services could hardly be said to be emancipating the poor.

Nor were these contradictions merely a matter of rhetoric. While legal services programs were to be affiliated with community action agencies where feasible, they were expected to have separate policy-making boards to insure their independence, including their ability to represent clients against the community action agency. The 'heavy artillery' was to be engaged through guerrilla units without direction from, and possibly even contrary to the interests of, the local command centre. The test case tactic exacerbated this problem. It was a use of the law that called on the most highly developed skills of a lawyer and so was the least amenable to public participation. It distanced the public even further from the workings of the law. This use of the reform strategy meant that the best of the traditions of lawyers were being brought to bear on the problems of the poor, but the strategy did not question those traditions themselves. In the name of professional autonomy, NLSs became trapped in a contradiction. The poor were a class of people who were collectively aggrieved and on whose behalf lawyers were to speak, yet lawyers would not be accountable to the class but to the individual client. Under the guise of professional values, lawyers elevated the interests of their individual clients over those of the class to which the client belonged. Where class interest and individual interest collided, lawyers would side with the individual. From the point of view of the traditional understanding of the relationship between a lawyer and client, this insistence on professional independence may have been defensible, though limiting. In the context of the war on poverty it led to decisions that, in turn, resulted in policies that slowed the exploration of possible new ways of conceiving that relationships and of potential ways of using individual cases for community development and empowerment.

Though the ideas about law that were used in the War departed significantly from conventional understandings, the law was still seen as a weapon to be wielded by a specially trained cadre of poverty warriors whose greatest value lay in the autonomy of their professional judgment. This 'new breed' of lawyers functioned independently from other organizations in the communities they served, prohibiting the very kind of community interaction that the War on Poverty espoused. That control limited the exploration of new ways of conceiving the relationship of the public to the law, lawyers, and the legal system. The relationship of the poor to the law was changed significantly by the War, but the relative standing of the poor to those who controlled the legal system remained unchanged. The legal revolution would fall short of fundamentally altering the balance of power between the poor and the legal elite. The poor would get only what the institution of law permitted, its private domain fiercely guarded by the first loyalties it claims from its warriors.

The NLS experience reflected several features of the new social reform paradigm. Lawyers brought their professional expertise to bear on the problems of the poor; those problems and the law itself were politicized; democracy was championed; and a new type of agency with new and potent tactics was employed to carry out that reform. However, the NLS program deviated markedly from the model in denying the participation of the poor in this reform strategy and in advancing a more traditional aspect of the concept democracy. If the paradigm started to unravel at the NLS level, it would virtually disintegrate in the community legal education experience.

Chapter 3 Notes

[1] The discussion of the shortcomings of the state of legal services for the poor is drawn chiefly from J.G. Murphy, "Conference Proceedings: The Extension of Legal Services to the Poor" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: Superintendent of Documents, U.S. Government Printing Office, 1964) 202; M. Frankel, "Experiments in Serving the Indigent" in *Conference Proceedings: National Conference on Law and Poverty* (Washington: U. S. Government Printing Office, 1965) 69; J.E. Carlin, J. Howard & S.L. Messinger, *Civil Justice and the Poor* (New York: Russell Sage Foundation, 1967) at 49.

[2] For example, no civil legal aid case was ever taken to the United States Supreme Court in the 89 years that legal aid was provided before the Legal Services Program was set up. See E. Johnson, Jr., *supra* note 2 at 13-14 and again at 189.

[3] The discussion of the early insights into the need for innovative legal services is drawn chiefly from C.J. Parker, "The New Haven Model" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Dept of Health, Education, and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 87; P. Wald, *Law and Poverty, 1965, Report to the National Conference on Law and Poverty, Washington, D.C., June 23-25, 1965* (Washington, D.C.: U.S., 1965); M. Frankel, *supra* note 1, 69; J.N. Finney, "The Harlem Experience" in J. Stats, *ibid.* 108; and E. Johnson, Jr., *ibid.*

[4] E. Johnson, Jr., *ibid.* at 22-23. See also J. Handler, *Neighborhood Legal Services - New Dimensions in the Law* (Washington: U. S. Department of Health, Education, and Welfare, 1966).

[5] Mobilization for Youth in New York; United Planning Organization in Washington, D.C.; and Action for Boston Community Development in that city. For descriptions of these projects, see C. Grosser, "The Need for a Neighborhood Legal Service and the New York Experience" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Department of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 73; W. Wells, "The Boston Neighborhood House Proposal" in J. Stats, *supra* note 1; C.J. Parker, *supra* note 3; P. Wald, *ibid.* and J. Handler, *ibid.*.

[6] For discussions of the funding of these projects, see D.P. Moynihan, *Maximum Feasible Misunderstanding: Community Action in the War on Poverty*, 2d ed. (New York: The Free Press, 1970); J.L. Sundquist, "Origins of the War on Poverty" in J. Sundquist, ed., *On Fighting Poverty: Perspectives from Experience*, vol. II (New York: Basic Books, Inc., 1969) 6; J. Handler, *ibid.*; M. Kempton, "When You Mobilize the Poor" in H.H. Meissner, ed., *Poverty in the Affluent Society* (New York: Harper & Row, 1966) 228.

[7] C. Grosser, *supra* note 5 at 74. E. Johnson, Jr., *supra* note 2 at 74.

[8] This discussion of the early NLS offices is drawn chiefly from C. Grosser, *supra* note 5; C.J. Parker, *supra* note 3; and E. Johnson, Jr., *supra* note 2.

[9] See C. Grosser, *supra* note 5; J. Handler, *supra note 4*; and E. Johnson, Jr., *supra* note 2.

[10] This discussion is drawn chiefly from M.G. Paulson, "The Legal Needs of the Poor and Family Law" in J. Stats, *supra* note 1; E.V. Sparer, "The New Public Law: The Relation of

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Indigents to State Administration" in J. Stats, *supra* note 1, 23; N.E. LeBlanc, "Landlord-Tenant Problems" in J. Spats, *supra* note 1, 51; J.E. Carlin, J. Howard & S.L. Messinger, *supra* note 1; and M. Frankel, *supra* note 1, 69.

[11] *Gideon v Wainwright* [1963] 372 U. S. 335 [hereinafter Gideon].

[12] E. Johnson, Jr., *supra* note 2 at 41.

[13] E.S. Cahn & J.C. Cahn, "The War on Poverty: A Civilian Perspective" (1964) 73 Yale L. J. 1317. The summary in this paragraph is drawn from that article. Edgar Cahn later became special assistant to Shriver and Shriver appointed Jean Cahn as his special consultant on legal services in late 1964. She served him in that capacity until she resigned in April 1965. See E. Johnson, Jr., *supra* note 2 at 41.

[14] E.S. Cahn & J.C. Cahn, *ibid.*. E. Johnson, Jr., *supra* note 2 at 34; G. Myrdal, "The War on Poverty" in A.B. Shostak & W. Gomberg, eds, *New Perspectives on Poverty* (Englewood Cliffs: Prentice-Hall, 1965) 121.

[15] E.S. Cahn & J.C. Cahn, *ibid.*at 1318.

[16] E.S. Cahn & J.C. Cahn, *ibid.* at 1331.

[17] This idea is more fully developed in Charles A. Reich, "The New Property" (1964) 73 Yale L.J. 733.

[18] The Cahns suggested that another answer to this problem lay in the development of indigenous leaders to articulate the demands and concerns of their constituency.

[19] E. Johnson, Jr., *supra* note 2 at 34-42.

[20] See Patricia Wald *supra* note 3 at 42-67 and E. Johnson, Jr., *supra* note 2.

[21] R.F. Kennedy, "Law Day Address" (1965) 13 U. Chi. The Law School Record 24 at 25.

[22] *Ibid.* at 26.

[23] *Ibid.* at 26.

[24] E. Winston, "Welcome Address" in J. Stats, *supra* note 1 at 202.

[25] Katzenbach credits Robert Kennedy with coining this expression. N.d. Katzenbach, "Address" in J. Stats, *supra* note 1, 202 at 10.

[26] N.d. Katzenbach, *ibid.* at 10-12.

[27] E. Johnson, Jr., *supra* note 2 at 43-56.

[28] P. Wald, *supra* note 3 at 68.

[29] Appendix to P. Wald, *supra* note 3.

[30] P. Wald, *supra note 3* at 3.

[31] R.S. Shriver, "The Availability of Legal Services: The OEO and Legal Services" (1965) 51 A.B.A.J. 1064.

[32] See T.M. Berry, "Address to the National Conference on Law and Poverty" in A. Chayes & R.L. Wald, eds, *Law and Poverty 1965: Report to the National Conference on Law and Poverty, Washington, D. C., June 23-23, 1965* (Washington, D.C.: U.S. Government Printing Office, 1965) 120 for a description of how the program worked in its first years. By 1967 there were over 600 NLS's staffed by 1200 lawyers. See American Enterprise Institute, *Legal Services Corporation Bill* (Washington: American Enterprise Institute, June 7, 1973) for how the program grew.

[33] R.S. Shriver, "How Lawyers Can Break the Poverty Barrier" (1966) Ill. B.J. 118.

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[34] Office of Economic Opportunity, *Guidelines for Legal Services Programs* (Washington: Office of Economic Opportunity, 1965).
[35] S. Shriver, "Legal Services to the Poor: National Policy" (1966) 41 Cal. St. B.J. 219. See also S. Shriver, "Legal Services and the War on Poverty" (1968) 14 Cath. Law. 92.
[36] A. Chayes, "Foreword" in A. Chayes & R.L. Wald, eds, *Law and Poverty, 1965, Report to the National Conference on Law and Poverty, Washington, D.C. June 23-25, 1965* (Washington: U.S. Government Printing Office, 1965) v.
[37] The *Economic Opportunity Amendments of 1965*, Public Law 89-253, 79 Stat. 973-79, Part II, 215; *Economic Opportunity Amendments of 1967*, Public Law 90-222, 81 Stat. 672-728.
[38] *Supra* note 34.
[39] *Supra* note 34 at i.
[40] This section is drawn from R.S. Shriver, "The OEO and Legal Services" (1965) 51 A.B.A.J. 1064; T. Finman, "OEO Legal Service Programs and the Pursuit of Social Change: The Relationship Between Program Ideology and Program Performance" (1971) Wisc. L. R. 1001; Office of Economic Opportunity, *supra* note 34; Office of Economic Opportunity, *The Poor Seek Justice* (Washington: Office of Economic Opportunity, 1967); Office of Economic Opportunity, *How to Apply for a Legal Services Program* (Washington: Office of Economic Opportunity, ; E. Johnson, Jr., *supra* note 2; P. Wald, *supra* note 3;
[41] E. Johnson, Jr., *supra* note 2 at 171 See also A. Yarmolinsky, "The Beginnings of OEO" in J.L. Sundquist, *supra* note 6.
[42] This discussion is drawn chiefly from S.A. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* (Baltimore: John Hopkins Press, 1969); A. Yarmolinsky, "The Beginnings of OEO" in J.L. Sundquist, *supra* note 6; E. Johnson, Jr., *supra* note 2;
[43] *Supra* note 34; C. McCarthy, The Consequences of Legal Advocacy: OEO's Lawyers and the Poor (Dissertation for Ph D, University of California, 1974) [unpublished] ; E. Johnson, Jr., *supra* note 2; R.A. Levine, *The Poor Ye Need Not Have With You: Lessons from the War on Poverty* (Cambridge: The M.I.T. Press, 1970); and A.M. Champagne, *OEO Legal Services: A Study of Local Project Performance* (Ph.D., University of Illinois, 1973)[unpublished].
[44] This did not remain the case as the law reform strategy became increasingly effective. See American Enterprise Institute, *Legal Services Corporation Bill* (Washington: American Enterprise Institute, June 7, 1973).
[45] E. Johnson, Jr., *supra* note 2 at 195.
[46] "Neighborhood Law Offices: The New Wave in Legal Services for the Poor" (1967) 80 Harv. L. Rev. 805.
[47] American Enterprise Institute, *Legal Services Corporation Bill* (Washington: American Enterprise Institute, June 7, 1973) at 1. See also E. Johnson, Jr., *supra* note 2 at 167 which claims this occurred as early as 1967.
[48] P. Marris & M. Rein, *Dilemmas of Social Reform, Poverty and Community Action in the United States*, 2nd ed. (New York: Atherton Press, 1973). Analysts were later to claim that the Legal Services Program was the most successful federal program ever in achieving significant social change. American Enterprise Institute, *Legal Services Corporation Bill* (Washington: American Enterprise Institute, June 7, 1973) at 13.

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[49] The description of the role of law schools is drawn from P. Wald, *supra note 3*;A.J. Goldberg, "Equal Justice for Rich and Poor" in M.R. Wolf, ed., *National Conference on Law and Poverty* (Washington: U.S. Government Printing Office, 1965) 144; M.G. Paulson, *supra* note 10; R.L. Spangenberg, "The Boston University Law School Student Program" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D.C.: U.S. Department of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 167;. C.E. Are, "Law School Curriculum Devoted to the Legal Problems of Indigents Conference Proceedings: The Extension of Legal Services to the Poor" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Government Printing Office, 1964.) 181; K. Pye, "The Georgetown Intern Program: Possibilities of Graduate Programs Keyed to the Civil Needs of the Poor" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D.C.: U.S. Department of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 173; C.J. Parker, *supra* note 3; C. Grosser, *supra* note 5; M.G. Paulson, *supra* note 10; W. Wells, *supra* note 5; "Proceedings of the National Conference on the Teaching of Anti-Poverty Law" in E. Phillips, ed., *National Conference on the Teaching of Anti-Poverty Law* (New York, New York: Association of American Law Schools, 1969) ; S.A. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* (Baltimore: John Hopkins Press, 1969); T.M. Berry, *supra* note 32; Office of Economic Opportunity, *The Poor Seek Justice* (Washington: Office of Economic Opportunity, 1967);

[50] S.D. Pepe, "Clinical Legal Education: Is Taking Rites Seriously a Fantasy, Folly, or Failure?" (1984-85) 18 U. Mich. J.L. Reform 307.

[51] N.d. Katzenbach, *supra* note 25 at 11.

[52] In addition to references already mentioned, see R.S. Shriver, *supra* note 31; T. Finman, "OEO Legal Service Programs and the Pursuit of Social Change: The Relationship Between Program Ideology and Program Performance" (1971) Wisc. L. R. 1001; E. Wickenden, "The Indigent and Welfare Administration" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Dept of Health, Education and Welfare, Office of Juvenile Delinquency and YOuth Crime, 1964) 202; C. Grosser, *supra* note 5 and A.K. Pye & J. Raymond F. Garraty, "The Involvement of the Bar in the War Against Poverty " (1966) 41 Notre Dame Law. 860.

[53] R.S. Shriver, *supra* note 31.

[54]The NLS program was introduced by the OEO shortly after two race riots in Washington, D.C. See W.S. Greenawalt, "Reformers Against the Clock" (1968) 14 Cath. Law. 161.

[55] R.S. Shriver, *supra* note 33 at 120. See also S. Shriver, "Law Reform and the Poor" (1967) 17 Am. U. L. Rev. 1; S. Shriver, "The Organized Bar and OEO Legal Services" (1971) 57 A.B.A.J. 223; and in S. Shriver, "A Giant Step to Justice" (1971) Nov/Dec Trial Magazine 47.

[56] This discussion is based on N.d. Katzenbach, *supra* note 25; C. Grosser, *supra* note 5;. E. Johnson, Jr., *supra* note 2; R.H. Smith, *Justice and the Poor*, 3rd edition ed. (Boston: D. B. Updike, The Merrymount Press, 1924); and E.A. Brownell, *Legal Aid in the United States: A Study of the Availability of Lawyers' Services for Persons Unable to Pay Fees* (Rochester: The Lawyers Co-operative Publishing Company, 1951).

[57] See C.A. Reich, *supra* note 17.

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[58] R.S. Shriver, "The OEO and Legal Services" (1965) 51 A.B.A.J. 1064; See also E. Johnson, Jr., *supra note 2*; and R.H. Smith, *Justice and the Poor*, 3rd edition ed. (Boston: D. B. Updike, The Merrymount Press, 1924) For other challenges by the profession see [Grivi, 1966 #388.

[59] This discussion is drawn from K. Pye, "Legal Aid - A Proposal" 47 N.C.L.R. 569; P.J. Hannon, "The Leadership Problem in the Legal Services Program" L. & Soc'y Rev. 235; E.V. Sparer, "The Welfare Client's Lawyer" (1965) U.C.L.A. Law Review 361; N.d. Katzenbach, "Luncheon Address" in *Conference Proceedings: National Conference on Law and Poverty* (Washington: U. S. Government Printing Office, 1965) 61; and T.H. Rothwell, "Better Legal Services for a Greater Number" (1966) 41 J. Cal.St. B.J. 259.

[60] This discussion is drawn from R.H. Smith, *Justice and the Poor*, 3rd edition ed. (Boston: D. B. Updike, The Merrymount Press, 1924); E.A. Brownell, *Legal Aid in the United States: A Study of the Availability of Lawyers' Services for Persons Unable to Pay Fees* (Rochester: The Lawyers Co-operative Publishing Company, 1951); T. Voorhees, "Legal Aid - Current needs, New Directions" in *Conference Proceedings: National Conference on Law and Poverty* (Washington: U. S. Government Printing Office, 1965) 67; M. Frankel, *supra* note 1; H. Tweed, *The Legal Aid Society New York City 1876 - 1951* (New York: The Legal Aid Society, 1954).

[61] See R.S. Shriver, "The OEO and Legal Services" (1965) 51 A.B.A.J. 1064 and S.A. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* (Baltimore: John Hopkins Press, 1969).

[62] E. Johnson, Jr., *supra* note 2 at 22-23. See also C.J. Parker, *supra* note 3 at 91.

[63] E. Johnson, Jr., *supra* note 2 at 25.

[64] This discussion is drawn from E. Johnson, Jr., *supra note 2*; J.E. Carlin, J. Howard & S.L. Messinger, *supra* note 1; Z.F. Hostetler, "Law Governing the Practice of Law by Lay Intermediaries" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D.C.: U.S. Department of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1964) 94; F.W. McAlpin, C. Bamberger & W. Theophilus, "Legal Aid" (1966) XXIII Wash. &Lee L. Rev. 235; R.S. Shriver, *supra* note 31; S. Shriver, "Law Reform and the Poor" (1967) 17 Am. U. L. Rev. 1; E.C. Bamberger, Jr., "Legal Services to the Poor: Basic Principles" (1966) 41 Cal. St. B.J. 224.; T.M. Berry, *supra* note 32.

[65] As distinct from control by the organized bar. Bar associations did not run NLS's.

[66] *Supra* note 34 at 8.

[67] American Enterprise Institute, *supra* note 32.

[68] According to Lemuel H. Matthews, San Fancisco was distinguished as the only city in the United States where NLS's were required to be controlled by a majority of representatives of the poor. He also reports that one program in Newark, New Jersey had a board composed equally of representation from the poor and from the legal profession. L.H. Matthews, "Legal Services to the Poor: Armageddon in San Francisco" (1966) 41 Cal. St. B.J. 284.

[69] It should be noted that representatives could consist of people other than the poor but who might be seen to represent them.

[70] The annual total budget for fiscal 1966/67 was $42 million which provided funding to over 800 new law offices. E. Johnson, Jr., *supra* note 2.

[71] By 1967 there were approximately 2000 lawyers employed in NLSs. E. Johnson, Jr., *supra* note 2.

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[72] L. Powell, "Closing Address" in M.R. Wolf, ed., *National Conference on Law and Poverty* (Washington: U.S. Government Printing Office, 1965) 166 at 170.

Chapter 4 - The Role of Preventive Law

For the legal services strategy of the War on Poverty to be successful, the poor had to understand that they had rights and that lawyers were available to defend their interests.[1] To ensure that this was the case, neighbourhood legal services (NLSs) carried out a variety of outreach activities in the communities they served. These activities were not solely promotional, but included services directed at preventing legal problems, encouraging self-help where appropriate, and organizing the community around common problems.[2] Although it did not reflect this diversity well, the term 'preventive law' was used to refer to non-traditional legal services for the poor. Focused initially on poor individuals, preventive law efforts soon expanded to include educating the entire community – social workers, schools, youth, parents, clergy, and community leaders. The War provided unprecedented resources and a "no holds barred" attitude with which to pursue these possibilities. It also gave unprecedented exposure to the concept of preventive law, an idea that had such appeal that it could not be contained within poor neighbourhoods. If preventive law benefited the poor, what about all the other people who were ignorant of their rights? From its humble beginnings in neighbourhood legal services, preventive law became transformed into community legal education, replete with professional education for intermediaries, law-related education in the schools, and widespread public education about the law. Exciting as these developments were, as the transformation took place, some of the first outreach activities fared less well, particularly the harder, more frustrating, and less certain work of organizing the community to tackle its underlying problems. As community legal education left the confines of the NLS, it drifted away from its social action base, softening its radical rhetoric and justifying itself in terms that suited the ever-shifting social agenda.

If preventive law or its successor, community legal education, had conformed to the new social reform paradigm, they might have been expected to have been carried out by professionals who spread the word that law oppressed the poor but that something could be done about it. Preventive law might have taught the poor how to recognize and deal with systemic discrimination and how to participate in the decisions affecting their lives. It might have been used to provoke action on law-related issues or at least to ensure that legal resources were mobilized in support of action organized by other players on the reform team. The social action model of preventive law might have meant that, under the auspices of the local NLS, professionals would scientifically manage a variety of activities involving a multitude of stakeholders in reforming various institutions that served the community, especially the legal system. While there were instances where something approximating that type of preventive law occurred,[3] that was not the model that came to dominate. Rather, the case-oriented, legalistic perspective and work of NLSs better supported teaching "black letter law," providing tips on preventing common legal problems, and generating support for the virtues of the rule of law. The "civilian perspective" of NLSs meant that they remained one step removed from the public fray, their own guerrilla warfare consisting of case by case assaults on specific targets. Community legal education served as an emissary between NLSs and the more action-oriented elements of their communities. It was enough to be telling the poor that they had rights long hidden from them. Other warriors could lead the poor into battle. Ways and means would differ between the various armed forces, but preventive law was doing its part, humble as that might be.

PRE-WAR PREVENTIVE LAW ACTIVITY

Preventive law was not an invention of the War on Poverty's legal services strategy; it had been practiced in America since the turn of the century. For example, the New York Legal Aid Society's *The Sailors' Log*, first published in 1904, went through three printings by 1924, and that society also distributed some 5,000 copies of a *Handbook for Domestic Servants.*[4] In 1912, the Kansas City Legal Aid Bureau published a forty-four page booklet covering the legal questions that most commonly arose in the lives of the poor. The original 2,000 copies were quickly distributed and another edition, which was translated into several languages, was subsequently printed. Several societies cooperated to produce *Legal Suggestions for Soldiers and Sailors and their Dependents*, 150,000 copies of which were distributed through military agencies, the Red Cross, and directly to individuals after World War I. In

1924, the legal aid agency in Akron distributed twelve thousand copies of a leaflet on the law concerning loans, chattel mortgages, and other financial transactions. Even the term "preventive law" was in vogue in the early 1900s. Using a metaphor that still resonates in public legal education today, Reginald Heber Smith likened this work to preventive medicine, and saw it as "searching for the cause of the wrong and then of ascertaining the cure."[5]

By the time of the War on Poverty, legal aid agencies were undertaking a considerable amount of preventive law activity,[6] including seminars for social workers, union meetings, church groups, and PTA gatherings. Legal aid lawyers also drafted pamphlets and leaflets to support these sessions or to distribute to their clients. In some cities, legal aid supplied regular newsletter columns. The American Bar Association also sponsored educational services and local bar associations cooperated with radio and television stations to provide information. The topics of these various educational efforts ranged from instalment contracts, to domestic relations problems, workers' compensation, the dangers of signing a blank form or executing a document without reading the small print, and the consequences of ignoring a summons, falling behind in making payments on insurance policies, or failing to pay rent when it was due.

Educating the poor was taken almost for granted as the starting place for the pilot neighbourhood legal services.[7] The proposal for Mobilization for Youth's legal unit provided specifically for preventive legal services and for the legal orientation of lay community leaders, professional staff, and clients in the hope that a sufficient level of legal knowledge would become distributed through the community to enable residents to seek legal recourse. With some 400 staff members including social workers and indigenous family aids, streetworkers, crewchiefs and vocational-guidance counselors, community organizers, recreation leaders and group workers, teachers and guidance counselors, clergymen and community leaders, MFY had an extensive delivery team.

Issues confronting these pioneers of community legal education included

- who should provide these services - should it be only professionals or could others perform this function? If so, what qualification should these others possess?
- when should these services be provided - in the context of an emergency or at the option of the agency? When would the recipient be most receptive to the message, and when would the intervention be most effective?
- what kind of educational services should be provided - on the obvious problems like consumer transactions or more generally? Should it

encompass education about the political economy and using citizenship resources? Should services enter into controversial domains? Should they provide advice regarding the effective use of political means of effecting social change?

- how should educational services handle conflicts in value systems that might arise from the different religious or cultural heritages of clients?
- what part of the community was it most important to educate - those who were maintaining the system or those who were dependent on it?
- why was this education being proposed at all - just to prevent problems or to encourage self-help?

It was conceded at the 1964 conference on law and poverty that little systematic work had been done with respect to the educational method most appropriate to forewarning the poor of possible legal problems.[8] It was suggested that there might even be problems inherent in both the complex nature of legal knowledge and the capacities of the poor client that make communication difficult. Three types of problems were identified:

- cultural - community apathy and cynicism associated with many groups at the bottom of the income ladder and their proclivity for getting into legal difficulties;

- professional - overly aggressive case finding by lawyers with attendant loss of professional dignity;
- methodological - written information was of little use in directly reaching the poor but it was crucial for a lawyer to be available to an individual or a group when needed. Meeting with indigenous groups seemed to show promise as did indirect methods of reaching the poor.

These were challenges to be met, not impediments to proceeding, and preventive law was to become a key ingredient of a properly composed neighbourhood legal service.[9]

THE EVOLUTION OF COMMUNITY LEGAL EDUCATION

What the War on Poverty brought to those early community education efforts was the government-backed commitment to meet the legal education needs of the poor on a large scale. The original idea behind the commitment was quite narrow: preventive law was to let people know about their rights and obligations and to show them how to prevent problems so that legal action would be the exception rather than the rule.[10] Before the poor could invoke the benefits of the legal system, they had to know they had rights.[11] The OEO encouraged preventive law activities of the following sort:

- written materials using simple language to explain fundamental legal principles and common legal problems with information on how to contact a lawyer;

- small group discussions between lawyers or other experts and members of poor communities regarding legal rights and the legal service program;
- classes for junior and high schools students on fundamental legal principles relevant to their lives;
- media activity; and
- training of professionals and semi-professionals who work with the poor to make them more sensitive to the legal rights and responsibilities of their clients and more aware of the resources available in the community to provide legal services.[12]

Activities also included promotion to the business community of model legal forms to help residents with instalment contracts, leases, etc.; and promotion of legal services to people in the community by the agencies on which the poor depended.[13] Whatever form they took, the OEO would fund programs that taught the poor and those who worked with them to recognize problems that could be best handled by the law and lawyers but for which the poor might be "unable, reluctant, or unwilling" to seek help.[14] Legal education programs for the poor would spread the word and engender faith in the legal system. With a new appreciation of the law, the poor would turn to it instead of violence as a means of redressing their grievances. Through the use of the law, their voices would be amplified and they would take their rightful place in the political chorus. When the *Economic Opportunity Act of 1964* was amended in 1967,[15] community legal education for social justice was legislated.

As neighbourhood law offices began to practice preventive law, they gave shape and substance to this aspect of their mandate. In the early years, the mandate was generally interpreted to cover all the agency's educational needs, including their public relations efforts with the local bar and the public.[16] The starting point for preventive law activities was usually the same as for the pilot legal units: to equip the poor to recognize the potential of legal remedies and the availability of the new legal services. NLSs recognized that these objectives could be accomplished by working with others in the community, particularly social workers and teachers. In time, three main strategies for carrying out the educational function of preventive law took shape: educating the indigent, educating those that worked with the poor, and promoting law related education in the schools.

1. Educating the Indigent

One of the earliest forms of client-centered education was the distribution of some "pleasantly written" booklets covering selected topics.[17] Finding that booklets often lay around in agencies without being much used, Mobilization for Youth came up with the idea of producing wallet sized cards with information that juveniles could refer to should they get arrested. Neighbourhood lawyers, volunteers from the bar, and law students also gave presentations about legal problems and legal services to groups of poor people. Other NLSs also became innovative, testing the effectiveness of using all forms of media, including TV, radio, newspapers, newsletters, posters, calendars, wallet cards, bumper stickers, pamphlets, and even comic skits. The need for this information was massive. Shriver claimed that, by 1968, several millions of Americans had learned about their legal rights and responsibilities through preventive law activities.[18] To help NLSs meet that demand, the National Clearinghouse for Legal Services at Northwestern University School of Law published stories of successful educational efforts in its newsletter, *Law in Action*. In 1971, the Clearinghouse published an 800 page compendium of materials generated by local NLSs.[19] A review of the contents of that tome suggests that NLSs emphasized education on financial matters (budgeting, credit, contracts, fraud, deceptive practices), giving somewhat less attention to information on arrest, traffic violations, employment law, welfare issue, health law, housing law, school law, and immigration law. Only one item in the Clearinghouse compilation dealt with organizing the community to deal with legal issues themselves.[20]

Lessons learned through early experiences became truisms of community legal education.

- People are generally not interested in learning about the law unless they are experiencing a problem.[21]
- Specific, practical information is better received than abstract, general discussions.[22]

- The poor are not for the most part joiners and do not attend public lectures offered them.
- The 'illiterate poor' are unable to read the pamphlets and brochures crafted by NLS lawyers.[23]
- Materials must be available when needed.[24]
- The effectiveness of written material is enhanced if it is developed in consultation with members of its intended audience and distributed at meetings where the content of the material is discussed.[25]
- Topics need to be selected to suit specific audiences; presentations need to be offered in the language spoken by the audience and at an appropriate time in the year.[26]
- Educational activities should be integrated into community development programs and delivered through exiting community associations, if any.[27]
- Information must be action-oriented, emphasizing concrete steps to improve a situation.[28]
- There will never be enough lawyers to do all the education that is needed so others working with the poor must be enlisted;[29]
- Lawyers are not likely the best people to reach the most exploited, the most seriously disadvantaged, and the most in need of legal help because those people are least likely to reach out to an agency on their own initiative.[30]

- Just having lawyers in the community has a salutary affect on the attitude of the poor toward the law.[31]
- Community legal education is jurisdiction-specific even where it is provided to give only general facts to make the recipient more cautious or to encourage him to seek the advice of a lawyer when a personal issue arises.[32]
- School children can often be used as a means of reaching their parents.[33]

Many of these lessons show the embarrassing naïveté of the staff and volunteers of NLSs and of the law students who undertook early community legal education projects. The distance between their lives and the lives of the poor was obviously considerable. It soon became evident that lawyers and law students had neither the time nor the real expertise to teach lay audiences. The OEO encouraged NLSs to create special units to undertake community education and to employ graduate students in journalism or the social sciences and to use non-professional aides to assist in developing and delivering programs.[34]

Basic as preventive law programs were, they still attracted controversy. In educating the community about the existence of the neighbourhood office, preventive law was challenged as being an unethical technique for soliciting clients.[35] It was unseemly to be going out into the community drumming up business even for a free legal clinic and it was against the legal profession's code of ethics to do so. This problem was resolved in the typically legal fashion of distinguishing the kind of socially motivated educational and promotional activities of the NLSs from the more commercially motivated and prohibited acts of advertising and champerty prohibited by the Canons of Ethics. When the use of NLSs picked up, the promotion of legal services came in for criticism again, this time from within the legal services program. Community legal education was over-stimulating demand for services, contributing to a caseload crisis. NLSs had to set firmer priorities for their limited resources. By the early 1970s, they were accused of backing off their preventive law function altogether, a retrogressive step that tended to increase the dependency of the poor on the legal system.[36] Preventive law weathered these storms and continued as the bearer of empowering information about rights, remedies, and the availability of legal services, but educating the indigent had peaked. No longer needed to secure the place of NLSs in the community, preventive law lost its status and profile. If the burdens of citizenship were too great for the poor, the law was certainly too complex for them to do much with themselves.[37] Nor was community legal education to be put to more political uses. There would be few political commentaries on the law of the Bodichon sort. If bad laws were a problem, lawyers would see to their reform.

2. Educating Advocates

Neighbourhood law offices not only provided preventive education directly to the poor, they also worked indirectly by equipping others to better advocate for their indigent clients.[38] It was generally conceded that many of the problems of the poor did not need the attention of lawyers.

> It does not take a lawyer to right every wrong. It does not even take professional training. It takes only a human being with the capacity to recognize and respond to injustice.[39]

A new profession of advocates was needed to do a job that was, at least rhetorically speaking, too big and too important to be left only to lawyers. Social workers, lay advocates and community activists were called into action. It was they who had the most direct contact with the poor and who would be in the best position to spot people in need of legal assistance. These intermediaries were often the ones the poor turned to for help in dealing with the police, landlords, welfare inspectors, and other authorities in their lives, so it was imperative that those front-line workers be oriented in "critical areas" of the law.[40] With appropriate legal education, social workers would be able to recognize legal problems that they might otherwise miss.

The relationship between the legal and social work professions was of particular importance during this time.[41] A number of high profile cases, including a successful legal challenge to a Louisiana law depriving 23,000 children of welfare had brought the point home to social workers that the law was a much under-utilized instrument for effecting social policy.[42] For their part, lawyers were acquiring a new respect for social workers who had, for too long, been carrying the burden of attending to the needs of the poor. Seeing that the legal and social problems of the poor were intertwined, lawyers and social workers agreed that they could accomplish much more by combining their efforts than either discipline could achieve separately.[43] Together the two professions could review the administrative action and discretion of bureaucracies, develop new ways of delivering services, and engage in social action and social change. To work together effectively, lawyers and social workers needed to have some understanding of each other's disciplines, a common understanding of their respective strengths and weaknesses, and a shared recognition that law was an ever-changing process.[44] This inderdisciplinary understanding was to come about through formal and informal training and through inter-professional relationships occasioned by bodies such as lawyer-social worker committees. At Action for Boston Community Development, one of the pilot NLSs, the commitment to integrating expertise went so far as to providing preservice and inservice classroom training to all workers.

While lawyers needed to better understand the competencies of social workers, it was the legal education of social workers that seemed to get the most attention. Worried that too little knowledge about a segment of the law might be dangerously misleading, proponents of legal education for social workers argued that they should have "a general understanding of jurisprudence, the function and limitations of the law in general, and a knowledge of certain basic concepts which prevail throughout the law; particularly of liberty and the function of government" and "certain basic ideas of procedure, of burden of proof, of evidence."[45] Only then could a social worker be expected to safely comprehend the significance of more specific information about the law. A proper legal education would teach social workers how to work within the limits of their knowledge and how to work well with lawyers. To meet this standard, courses on law and social work were introduced into the curricula of schools of social work. If the standard for the education of social workers was established with care, so were its limits: social workers were not being trained to be mini-lawyers.[46] Lawyers would be lawyers and social workers would be social workers. Neither was to cross over into the domain of the other.[47]

Some NLSs also trained legal assistants to carry out specific responsibilities to help alleviate their caseload problems and to bridge the gap between lawyers and the community.[48] These quasi-professionals handled uncontested divorces, routine bankruptcies, garnishee appeals, as well as preventive law and community development activities. Suggestions for recruiting and training these personnel were published in *A Compilation of Materials for Legal Assistants and Lay Advocates*,[49] a second 800 page compendium assembled by the National Clearinghouse for Legal Services. In these materials can be seen the increasing distancing of legal services from direct involvement in social action. In the first few pages of the book, the role of the legal assistant is defended on practical grounds – lawyers spend too much of their valuable time on simple and routine activities that someone else could be trained to do. A legal assistant could be the "right hand man" of the lawyer, a role "always defined and circumscribed by the needs of the attorney."[50] Fourteen possible functions for these new paralegals were detailed, most of them focusing on functions related to traditional case work, like interviewing, interpreting, investigating, negotiating, advocating, researching, drafting, and serving documents. Two roles were less traditional, those of social worker and community teacher. Relegated to last on the list was 'community organizer,' the role responsible for mobilizing community resources and assisting with collective action.[51]

The role of legal assistant was generally distinguished from the role of community worker. The latter's role was defined more by the goals of the agency than by the needs of a specific lawyer. It was often through the efforts of these community workers that community legal education took its most strident form. The Dixwell Legal Rights Association in New Haven, Connecticut, an OEO funded program to train neighbourhood workers for the Legal Services Program, had a particularly coherent approach to this strategy.[52] At that service, community workers were trained to counter some of the negative impacts of the more legalistic preoccupations of lawyers and to make up for the inability of lawyers to get more involved in their communities. According to Dixwell, in taking care of the legal problems of the poor, lawyers tended to leave the poor with the impression that they were incapable of solving their own problems and so contributed to their feelings of inadequacy and powerlessness. Giving priority to the test case strategy also had negative effects. It ignored the many problems of the poor that were not litigable. It obscured the practical problems of enforcing rights gained in the courts. And, it failed to address the biggest portion of the caseload problem – uncontested divorces.

The Dixwell approach to using community workers went a long way to compensate for these tendencies. Community workers were expected to go door to door and meet as many people in their neighbourhoods as possible, acquiring an intimate understanding of the problems of the neighbourhood in the process. As they talked with people, workers carried out a form of one-on-one community legal education that ensured that the poor learned about the rights and remedies that really mattered to them. Pamphlets were prepared to aid the community worker – to structure discussions, to reassure both him and the resident that they had thoroughly and accurately covered a topic, and to reinforce the information imparted. Dixwell prepared their pamphlets with care, ensuring that they dealt only with topics that the resident could act on either personally or with the help of the community worker. If a lawyer's service was needed, then the resident was instructed as to what information the lawyer would need. Trying to explain areas of the law that were too complex for the resident to act on was seen as an exercise in frustration. For that reason, community workers stayed away from handling complaints about the private sector, like consumer problems, which benefited from the more formal tactics of a lawyer.[53]In situations such as these, the worker played whatever liaison role between the lawyer and client was appropriate.

Dixwell workers concentrated their efforts on problems in dealing with public agencies where a poor person was better positioned to claim entitlements. As much as possible, a community worker would encourage a resident to advocate on his own behalf, but where that was impractical, the worker assumed the advocacy role. This was a field of practice that community workers soon mastered, learning that most problems could be resolved in favour of their clients simply by climbing the bureaucratic hierarchy until they got to the most liberal person in the structure. Lay advocates were preferable to lawyers for this work. If drawn from the community, they had the immediate effect of serving as positive role models. Their success in challenging authorities was proof to others that someone like them could actually have an impact. These workers could then teach others in the community how to be more effective in their own problem-solving efforts. Community workers would also take on cases that lawyers considered not worth their time. They knew better than lawyers how to make bureaucracies work and could use tactics that might be looked at askance if attempted by a lawyer. The effectiveness of this strategy was reflected in the report of local welfare office that more requests for special items were received from New Haven where Dixwell operated than from all of the rest of the state combined.

As they went door to door, Dixwell-trained community workers would find numbers of people who shared similar problems. It became evident that organizing these people into groups would be an effective way to press for solutions. If necessary, the NLS lawyer could then act for the group. However, Dixwell cautioned that community organizing was proving frustrating in the NLS context. It seemed that there were basic incompatibilities between the main case work of NLSs and the demands of rallying the community on behalf of a cause. Community organizing requires a certain "fanaticism" that is antithetical to a law office. It is hard to create the kind of atmosphere needed to work up a fervour in the staid environment of legal books and office routines. Lawyers' professional responsibility to put an individual client's interests first also meant that their basic inclinations conflicted with those of an organizer's. The latter would not want an issue settled in the interests of one individual but rather in the interests of the group who shared the problem. If the individual problem was solved, the cohesiveness of the group might be threatened and the sense of outrage essential to organizing social action might be dissipated. Community organizing tended to be more effective if undertaken by special interest groups formed for the purpose and led from within rather than sponsored by NLSs. NLSs could support these groups in many practical ways, like providing secretarial support, community legal education, and legal advice, but those were roles that did not stand up well against other competing demands for resources.

3. Law-related Education in the Schools

During the War, lawyers and law students became involved with local schools in providing presentations on a variety of topics relevant to the life of inner-city students. About that time, traditional civics courses had reached a low ebb, deficient in both content and method;[54] visits of poverty lawyers were a welcome relief from the tedium of these classes. By 1965, Shriver reported that lawyers were involved in legal education for high school teachers and guidance counselors and that he expected that NLS offices would soon be developing courses for high school students on the Bill of Rights and other areas of the law that affected poor people.[55] Students showed a keen interest in learning about their rights and responsibilities, an interest that soon outstripped the resources of local NLSs, legal aid services, and law schools.[56] Given their other obligations, lawyers and law students were generally limited to making only a few visits to any school each year. However, even this limited contact suggested that law-related education benefited the students, the administration, and parents.[57] Various state bar associations picked up on this insight and launched special law-related education programs.[58] These efforts were directed to a variety of ends, including citizenship education and delinquency prevention.[59] By 1971, the American Bar Association had established a Special Committee on Youth Education for Citizenship which served as a clearinghouse of information about the hundreds of programs going on around the country.[60] Preservice and inservice training of teachers was also initiated to better prepare them for curricular changes.

These three approaches to community legal education shared a common purpose – enhancing respect for the rule of law. That respect might flow from the practical benefits of knowing and enforcing rights but the real winner was not the individual who enforced an entitlement, but democracy and society as a whole. Community legal education was also grounded in a common concept of law – that understanding of law that was practised and perpetuated by lawyers. Since NLSs were controlled by lawyers, lawyers had the first and final say as to the objectives, priorities, content, and resources of their agency's outreach activities. Discrete bits of information were to be passed to the poor regarding laws that NLSs had determined were important for them to know, and lawyers were to be the source of that information. Paralegal staff, social workers, teachers and other intermediaries who might be involved in designing or delivering programs were trained to accept the law as being what lawyers said it was. Whatever value that might have had in ensuring the legal accuracy of the information disseminated by non-lawyers, it also limited the possibilities of sharing other understandings of the law. In fact, it was the job of community legal education to banish those other understandings, replacing them with the one true belief in the rule of law and the catechism of rights and obligations. The priests of this secular religion carried out their sacraments, never revealing the inner secrets of their rituals. The poor and young students were not capable of the intellectual rigour required to comprehend these rites, and by agreement, social workers, teachers, and other intermediaries stopped short of asking for admission to the inner sanctum. One could only become a disciple on admission to the high temple and submission to the requirements of apprenticeship. If the law and the legal system were to be changed, it would be up to lawyers to do it. That was, after all, the whole point of the NLS - to put the unique skills of the lawyer to work on behalf of the poor. Neither the definition of law nor the monopoly of lawyers on legal knowledge was ever meant to be questioned.

RADICAL STIRRINGS

Just as the community action agency deviated from the intention of its sponsors, some activists saw a more political purpose for preventive law than was the norm. As Cloward became increasingly radical, he (in concert with Francis Fox Piven) made one of the strongest claims ever advanced for community legal education: that it could be a powerful, militant tactic for bringing down the system that oppressed the poor. He argued that if the poor knew their rights, they would be so infuriated at having been denied their entitlements that they would spontaneously rise up and confront the bureaucracy with such demands as to paralyze it. For that to happen, ignorance of welfare rights would have to be attacked through all available means. Brochures were needed describing welfare benefits in simple, clear language urging poor people to seek their full entitlements. These would need to be distributed to every home, store, school, church, and public place in the community to ensure that everyone saw them. Rights would have to be advertised in newspapers and announced on radio. Leaders of formal and informal associations in the slums would have to be enlisted to spread the word and encourage reaction. Cloward believed that, by doing this, such a climate of militancy would be created that the poor would overcome their passive tendencies and take action without the need of organizers. He calculated that such a spontaneous, massive militant demand on the system would cause its collapse. Defeated, the government would finally institute a guaranteed annual income, abolishing poverty in a stroke. Community education would simply be the spark that would ignite the tinder box of anger. The poor would win their fight through nothing more sinister than a perfectly legitimate civic education drive to inform people of their rights under a government program. Cloward argued that, masquerading as civic education, community legal education could play a subversive role in the War on Poverty, provoking widespread civil disobedience.[61]

It does not appear that Cloward's proposal was ever implemented in the way he suggested, but a modified version of it was promoted by the Dixwell Legal Rights Association. There, one of the jobs of community legal workers was to seek out potential test cases for their lawyers. Once the lawyers selected an issue for litigation, it was the workers' job to keep a steady supply of similar cases coming in from the community. With a large enough pool of complainants, lawyers were not at the mercy of any individual client's commitment to persevering with his case nor his vulnerability to being "bought out" by the authority being challenged. The prospect of an unending line of requests and appeals could make even the most intransigent bureaucracy take a second look at its practices. Community workers generated these pools through the very method Cloward suggested - ensuring that everyone in the community that had a potential claim knew of it and of the clinic's efforts to get these entitlements for the neighbourhood.[62]

CONCLUSION

As part of the War on Poverty, preventive law, a long standing but *ad hoc* practice of legal aid agencies was given new vitality. Inspired by the revolutionary spirit of the War, the goal of eradicating poverty, and the rhetoric of 'participation' and 'empowerment,' preventive law was the first line of offence in using law to attack the causes of poverty. Its job was to ensure that the poor knew they had rights, recognized that those rights were being violated, and sought out legal assistance. Preventive law activities extended to providing legal education to social workers, legal assistants, community workers and others who served the poor, and to children in inner-city schools. With access to unprecedented resources, staff of the Legal Services Program provided information to millions of Americans, using both conventional and innovative techniques. Growing case loads testified to the effectiveness of these activities in getting the word out to the community but their effectiveness in actually preventing problems was less clear.[63] Questions remain as to whether the effectiveness of preventive law is impaired by some inherent flaw in the concept itself, by the delivery methods employed in community education activities, or by the ability of the poor to absorb the information provided. It is also possible that adequate measures have not been devised or applied to determining the impact of preventive law.[64]

In the first few years of the War on Poverty, NLSs explored a rich array of ideas about why, by whom, to whom, and how community legal education should be offered. A multiplicity of formats were developed to customize the delivery of information to meet the specific needs of a broad range of target groups. If preventive law had dubious success in living up to its name, it can take credit for making the services of lawyers better known to the poor, for initiating an intermediary strategy for providing information to the public, and for getting lawyers and law students into the schools. But embedded in the emerging practice of community legal education were a number of assumptions that were not acknowledged, let alone questioned. Foremost among these was the reliance on lawyers to define what "legal" meant. In the result, they determined the ends to which community education would be put, its content, and how far non-lawyers could go in unravelling the mysteries of the law. So much reliance on lawyers truncated the potential of community legal education. Little attention was paid to exploring how the poor, other cultures, or even other professionals saw the law, the legal system, or lawyers. The topics of public legal education were problems seen through the lens of the law, not through the eyes of the disaffected. Communication was one way – from the lawyer to the community. It might pass through interpreters of one sort or another along the way, but little feedback was sought. The intention and effect of this kind of community legal education was to bring the poor into the mainstream of American society as consumers of legal services, not to change the legal system itself. The rule of law triumphed for all. Community legal education, the standard bearer of the revolution, fired few volleys of its own. Politicizing the law devolved to other, special interest agencies.

In the War on Poverty, it was axiomatic that people had the right to know their rights. As lawyers educated the poor, they began to realize that almost no group in America – not its poor, its youth nor its middle class - were versed in the fundamental features of their legal system. It did not take lawyers long to begin to consider the need for a broad program of public education on the law. As community legal education stretched to cover those expanding needs, it became increasingly less associated with social reform and increasingly identified with more conservative interests. Social justice was never abandoned as a goal, but it tended to get downplayed as the public agenda shifted and citizenship development became a more acceptable way of legitimizing community legal education. As the current practice of public legal education attests, not all civic education is subversive.

Chapter 4 Notes

[1] S. Shriver, "Legal Services and the War on Poverty" (1968) 14 Cath. Law. 92.

[2] W. Statsky & P. Lang, "The Legal Paraprofessional as Advocate and Assistant: Roles, Training, Concepts and Materials" in M. Ader, ed., *A Compilation of Materials for Legal Assistants and Lay Advocates* (Chicago: National Clearinghouse for Legal Services, 1971) at 7.

[3] Dixwell Legal Rights Association, "Community Workers: a Manual for Lawyers" in M. Ader, ed., *A Compilation of Materials for Legal Assistants and Lay Advocates* (Chicago: National Clearinghouse for Legal Services, 1971) 251and J.A. Herrmann, "Outline of Laws for Para-legal Outreach Workers concerning the Legal Rights of Migrant Workers" in M. Ader, ed., *Community Legal Education Materials* (Chicago: National Clearinghouse for Legal Services, 1972) 700.

[4] These examples are drawn from R.H. Smith, *Justice and the Poor*, 3rd edition ed. (Boston: D. B. Updike, The Merrymount Press, 1924) at 212-213.

[5] *Ibid.* at 214.

[6] This discussion is drawn chiefly from J. Allison, "Legal Aid Educational Practices" in J. Stats, ed., *The Extension of Legal Services to the Poor* (Washington, D. C.: U. S. Department of Health, Education, and Welfare, Office of Juvenile Delinquency and Youth Development, 1964) 126.

[7] See for example, E. Johnson, Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974); J. Handler, *Neighborhood Legal Services - New Dimensions in the Law* (Washington: U. S. Deparment of Health, Education, and Welfare, 1966); P. Wald, *Law and Poverty, 1965, Report to the National Conference on Law and Poverty, Washington, D.C., June 23-25, 1965* (Washington, D.C.: U.S., 1965); and C.J. Parker, "The New Haven Model" in J. Stats, ed., *ibid.* 87; C. Grosser, "The Need for a Neighborhood Legal Service and the New York Experience" in *ibid.* at 73; J.N. Finney, "The Harlem Experience" in *ibid.* at 108.

[8] M.R. Wolf, ed., *National Conference on Law and Poverty* (Washington, D. C.: U. S. Dept of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Crime, 1965).

[9] P. Wald, *supra* note 7 at 67.

[10] Office of Economic Opportunity, *Guidelines for Legal Services Programs* (Washington: Office of Economic Opportunity, 1965).

[11] R.S. Shriver, "The Availability of Legal Services: The OEO and Legal Services" (1965) 51 A.B.A.J. 1064 and F.W. McAlpin, C. Bamberger & W. Theophilus, "Legal Aid" (1966) XXIII Wash. & Lee L. Rev. 235.

[12] Office of Economic Opportunity, *How to Apply for a Legal Services Program* (Washington: Office of Economic Opportunity, at 36-42.

[13] P. Wald, *supra* note 7 at 119.

[14] P. Wald, *supra* note 7 at 2-3. This statement was later modified to read: "To educate target area residents about their legal rights and responsibilities in substantive areas of concern to

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them." Office of Economic Opportunity, *Evaluation Manual* (Washington: Office of Economic Opportunity, 1967) 1-2.

[15] Section 222 (a) of the *Economic Opportunity Amendment Act of 1967* called on the LSP "to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, counseling, education, and othe rappropriate services. See also 1966 amendments.

[16] This discussion is drawn chiefly from J. Handler, *supra* note 7; D.R. Jones, "Legal Services Community Education: New Profile of a Program in Evolution" (1970) 29 Legal Aid Briefcase 49; R.S. Shriver, *supra* note 11; J. Allison, *supra* note 5 ; and F.W. McAlpin, C. Bamberger & W. Theophilus, *supra* note 11.

[17] E.V. Sparer, "Education of New York's Lower East Side" in J. Stats, ed., *supra* note 6 at 122. This discussion is drawn chiefly from P. Wald, *supra* note 7; Office of Economic Opportunity, *The Poor Seek Justice* (Washington: Office of Economic Opportunity, 1967); D.R. Jones, *supra* note 16; Office of Economic Opportunity, *supra* note 12; M. Ader, ed., *Community Legal Education Materials* (Chicago: National Clearinghouse for Legal Services, 1972).

[18] S. Shriver, *supra* note 1 . See also W.S. Greenawalt, "Reformers Against the Clock" (1968) 14 Cath. Law. 161 at 164.

[19] M. Ader, *supra* note 17.

[20] J.A. Herrmann, *supra* note 3.

[21] J.N. Finney, *supra* note 7 at 109.

[22] P. Wald, *supra* note 7 at 87-88.

[23] P. Wald, *supra* note 7 at 87.

[24] E.V. Sparer, *supra* note 17.

[25] J.N. Finney, *supra* note 7 at 109.

[26] J.N. Finney, *supra* note 7 at 109.

[27] See E.V. Sparer, *supra* note 17 at 123-124 for examples of working with tenant councils and with a consumers aid clinic.

[28] P. Wald, *supra* note 7 at 88.

[29] See E.V. Sparer, *supra* note 17 at 124 for a discussion of the need to work with social workers.

[30] See E.V. Sparer, *supra* note 17 at 124-125.

[31] J.N. Finney, *supra* note 7 at 110 and E.V. Sparer, *supra* note 17 at 125.

[32] J. Allison, *supra* note 5 at 128.

[33] P. Wald, *supra* note 7 at 88.

[34] Office of Economic Opportunity, *supra* note 12 at 14-15 and 22-23. See also D.R. Jones, *supra* note 16.

[35] At the time, Canon 27 of the American Bar Association's canons of professional ethics prohibited advertising and Canon 28 prohibited stirring up litigation or attracting business through intermediaries. See P. Wald, *supra* note 7 at 98. See also S.A. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* (Baltimore: John Hopkins Press, 1969). Dixwell Legal Rights Association, *supra* note 3; J. Handler, *supra* note 7; E.V. Sparer, *supra* note 17; M.B. Roche, "Notes: Ethical Problems Raised by the Neighborhood Law Office" (1965-66) 41 Notre Dame Law. 961; The issue of unprofessional solicitation by a lawyer engaged in educational advocacy by a lawyer hired by a group to do so was dealt with in *NAACP*

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v. Button [1963] 31 U.S. 415 and *In Brotherhood of Railway Trainmen v. Virginia* [1964] 377 U.S. 1.

[36] J.D. Whitler, "Public Legal Education" (1972/73) 12 J. Fam. L. 269.

[37] E. Winston, "Welcome Address" in J. Stats *supra* note 6 at 3. For an early statement of the complexity of law, see R.H. Smith, *supra* note 4 at 31.

[38] P. Morris, "The Grass Is Always Greener" (1979) 42 Mod. L. Rev. 291.

[39] N.d. Katzenbach, "Address" in J. Stats, *supra* note 6 at 13.

[40] P. Wald, *supra* note 7 at 94. See also T.M. Berry, "Address to the National Conference on Law and Poverty" in A. Chayes & R.L. Wald, eds, *Law and Poverty 1965: Report to the National Conference on Law and Poverty, Washington, D. C., June 23-23, 1965* (Washington, D.C.: U.S. Government Printing Office, 1965) 120 at 126; E.V. Sparer, *supra* note 17 at 124-125; E.D. Shapiro, "Specific Technique for Providing Social Workers with Legal Perspective" in J. Stats, ed., *supra* note 6, 148 at 153; H.K. Holme, "Paralegals and Sublegals: Aids to the Legal Profession" (1969) 46 Denv. U.L. Rev. 392; and N.E. LeBlanc, "Landlord-Tenant Problems" in J. Stats, ed., *supra* note 6, 51

[41] C.I. Schottland, "Social Work and the Law - Some Curriculum Approaches" (1967-1968) Buff. L. Rev. 719.

[42] E. Johnson, Jr., *supra* note 7 at 303 quoting Wickenden.

[43] See for example E. Winston, *supra* note 37 at 3; P. Wald, *supra* note 7 at 96. There were problems with these arrangements though as Canon 37 obliged lawyers to hold all communications regarding their clients in confidence. See C. Grosser, *supra* note 7 at 76 and P. Wald, *supra* note 7 at 106 on this point. See also S. Katz, *Guides to Cooperation - The Lawyer and the Social Worker - Report of the Committee on Lawyer-Family Agency Cooperation* (New York: Family Service Association of America, 1959) quoted by J.T. Zukerman, "Cultivating Social Perspective in the Lawyer: Specific Problems" in J. Stats, ed., *supra* note 6 at 135; L.L. Bennett, "Paths to Mutual Understanding and Cooperation" in J. Stats, *supra* note 6 at 158; W.T. Downs, "Providing the Social Worker with Legal Understanding: Specific Need" in J. Stats, *supra* note 6 at 144; E.D. Shapiro, *supra* note 40.

[44] This discussion is drawn chiefly from J.T. Zukerman, *ibid.* and L.L. Bennett, "Paths to Mutual Understanding and Cooperation" in J. Stats, ed., *supra* note 6 at 154; P. Wald, *supra* note 7; W.T. Downs, *ibid.*

[45] W.T. Downs, *ibid.* at 146; and E.D. Shapiro, *supra* note 40 at 152-153; L.L. Bennett, *supra* note 43; .and C.I. Schottland, *supra* note 41.

[46] P. Wald, *supra* note 7 at 94. Canon 47 prohibited the practice of law by non-lawyers. See Jacob T. Zukerman, *supra* note 43 and William T. Downs, *ibid.*at 135 and 140 respectively; and P. Wald, *supra* note 7 at 105. See also R. Sargent Shriver, "The OEO and Legal Services" (1965) 51 A.B.A.J. 1064 at 1065.

[47] E. Winston, *supra* note 37; and E.D. Shapiro, *supra* note 40 at 159.

[48] The use of the terms "aids," "sublegals" and "paralegals" was not standardized in the early years. Here the term legal assistant will be used to apply to a person who works for a legal clinic and lay advocate will be used to describe someone who worked in another agency and advocated on behalf of the poor or other disadvantaged group. See M. Frankel, "Experiments in Serving the Indigent" in *Conference Proceedings: National Conference on Law and Poverty* (Washington:

U. S. Government Printing Office, 1965) 69 at 76; H.K. Holme, *supra* note 40 at 409. See W. Statsky & P. Lang, *supra* note 2 at 2 for a list of some of the terms in use at the time.

[49] M. Ader, *supra* note 2.

[50] W. Statsky & P. Lang, *supra* note 2 at 4.

[51] W. Statsky & P. Lang, *supra* note 2 at 11.

[52] The following discussion is based on Dixwell Legal Rights Association, *supra* note 3.

[53] They also stayed away from community education strategies other than one-on-one discussions. The lecture strategy came in for particular criticism as being a defence mechanism to protect the lecturer, usually a lawyer, from real engagement with the audience.

[54] *Law-Related Education in America Guidelines for the Future* (St Paul: American Bar Association Special Committee on Youth Education for Citizenship, 1975) at 1.

[55] See R.S. Shriver, *supra* note 11 at 1065 and D.R. Jones, *supra* note 16 .

[56] P.F. Fishman, "Legal Education of Youth: How to Develop a High School Program" (1972) 5 Clearinghouse Rev. 588 at 588.

[57] P. Wald, *supra* note 7 at 88.

[58] See G.L. Sbarboro, "Law in the Elementary Schools" (1973) July 1973 Ill. B.J. 576; *Law-Related Education in America Guidelines for the Future* (St Paul: American Bar Association Special Committee on Youth Education for Citizenship, 1975); and R. Case, *On the Threshold: Canadian Law-Related Education* (Vancouver: Centre for the Study of Curriculum and Instruction, University of British Columbia, 1985) at 4-5.

[59] E.B. Laub, "The Story of 'You and the Law'" (1961) 7 Crime & Delinquency 237; and *Law-Related Education in America Guidelines for the Future* (St Paul: American Bar Association Special Committee on Youth Education for Citizenship, 1975) at 3.

[60] *Law-Related Education in America Guidelines for the Future* , *ibid.* at 71-72.

[61] R.A. Cloward & F.F. Piven, "The Weight of the Poor: A Strategy to End Poverty" in C.I. Waxman, ed., *Poverty: Power and Politics* (New York: Grosset & Dunlop, 1968) 311.

[62] Dixwell Legal Rights Association, *supra* note 3 at 261-262.

[63] J.D. Whitler, *supra* note 36 at 271-275, 291.

[64] Dixwell Legal Rights Association, *supra* note 3.

Chapter 5 – Social Reform in Canada

If the civil rights movement served to mark the beginnings of the sixties in the United States, Quebec's "Quiet Revolution," a movement to secularize and modernize the province's antiquated social institutions,[1] played a comparable role in Canada.[2] In its drive to catch up with the twentieth century, the province introduced reforms that touched all facets of Quebec life.

> Civil institutions were being shaken to their foundations by the Quiet Revolution. The Church was in great disarray, almost a state of rout. Universities were teaching relativism, even Marxism. The family was slowly disintegrating. And youth was challenging authority in all forms.[3]

The revolution unleashed pent-up Quebecois nationalist sentiments that in turn spawned a host of separatist organizations, including the Rassemblement pour l'independence nationale; the radical terrorist organization – the Front de liberation du Quebec (FLQ); and the Parti québecois . By the time the decade came to an end, teach-ins, walk-outs, strikes, protest marches, demonstrations, fighting in the streets, robberies, Molotov cocktails, arson, bombings, kidnappings, and an assassination had transformed the "Quiet Revolution" into a state of "apprehended insurrection"[4] and the federal government invoked the *War Measures Act*[5] suspending the rights of all Canadians. While comparing Quebec nationalism to the American civil rights movement may be strained in many respects, the political dissent in Quebec roused

Canadians from their complacency and challenged protesters elsewhere in the country to take themselves seriously.

In the rest of Canada, the sixties unfolded more slowly and peaked in the mid-1970s. Although poverty was an early and prominent concern, it was not accorded the place of honour that it enjoyed in the United States. Other issues competed for scarce resources. It took most of the 1960s just to shape the issues and develop the political agenda. Serious challenges to the status quo, protest, and political action came to the fore in the latter half of the decade and into the 1970s, cresting much later and at a lower level of intensity than occurred in the United States. The new social reform paradigm was in evidence as these changes took place but social action was not practised with the same vehemence as across the border and reform efforts took on distinctly Canadian qualities. Canadians were working within a very different form of federalism governed by a constitution that did not guarantee the kind of rights that Americans enjoyed. There would be no strong, centrally organized war on poverty; Canadians would not be called upon to exercise their patriotic duty in the cause of their fellow citizen. Rather, the government set about studying the country's problems through interminable royal commissions, Senate committees, and special task forces, legislating reforms, and carrying out a host of local and sector-specific initiatives. Without a war, there was no need of secret weapons, shock troops, and guerrilla tactics; no civilian perspective; and no standard bearers. During these formative years of the legal services movement in Canada, lawyers and law students would not enjoy pride of place in a national battle against injustice; they would have to settle for simply being useful.

SOCIAL INJUSTICE IN CANADA

Like the United States, Canada had for too long suffered from deplorable regional economic disparity reflected in higher than normal unemployment rates and extreme poverty in rural areas in the country.[6] In 1962, the federal government renewed efforts to deal with these problems by passing the *Agricultural Rehabilitation and Development Act*.[7] The agency that administered this legislation became a source of early reports on the nature of contemporary poverty in Canada.[8] Poverty in remote areas was matched by a growing problem of urban poverty. Urban migration in Canada was putting extreme pressure on limited housing stock driving up both the price of houses and the cost of renting an apartment.[9] Urbanization was also challenging municipalities to meet modern standards for land-use planning, transportation and traffic control, water and power supply, pollution control, recreational space and facilities, and other public services.

In 1967, the government established the Federal Task Force on Housing and Urban Development. Under the leadership of Paul Hellyer, Minister for Transportation, the Task Force examined the growing problem of the high cost of housing and housing shortages. Hellyer's committee was gravely concerned with what it found. While it concluded that Canada was not experiencing an urban crisis, the country did have a "serious urban problem." Travelling across the country, the Task Force saw "poverty in its rawest and ugliest form." In the now familiar language of the War on Poverty, it reported that poor families were not just struggling to achieve the average national income; they were "fighting to retain a vestige of human dignity and self-respect."[10] The Task Force sensed an ominous warning in this poverty. As people became increasingly frustrated with their inability to improve their situations, they could be expected to become increasingly emotional and less logical in their approach to solving problems. Violence would not be far behind. Canada was at its own crossroads. The Task Force called on cities to come to grips with their problems immediately. Echoing similar calls to action in the United States, the Task Force declared that

> Canada has the resources, material, technological and intellectual, to meet these needs and problems. To believe otherwise is to despair and surrender to the inevitable. But it is equally convinced that if these resources are to achieve their most productive and imaginative potential, far-reaching changes are required in the attitudes, organization and effort of all those involved in the urban process. And 'all those' in this context is an embracing phrase. It means governments at all levels. It means the people of Canada themselves who in the end will decide the kind of country and society this is to be.[11]

Innovative solutions were needed that would take into account social and cultural factors and engage residents in dialogue and planning for their neighbourhoods. The Task Force urged participatory democracy!

By the end of the decade, poverty had become a major subject of concern for government economists. The Economic Council of Canada (ECC), formed in 1964 to broaden understanding of Canada's economic goals and to encourage greater consistency in decision-making and policy development in support of these goals, agreed with Hellyer's Task Force. In the wake of the longest uninterrupted peacetime expansion of the economy in Canadian business history, the Council saw full employment, price stability, and equitable distribution of incomes as being within reach. At the same time, it found that there was far more poverty than the country could tolerate or afford. "Its persistence, at a time when the bulk of Canadians enjoy one of the highest standards of living in the world, is a disgrace."[12] Reminiscent of Galbraith, the Council reported that Canada had two kinds of poverty: case poverty – the plight of those who could not earn a living; and poverty of opportunity, – the plight of those who had difficulties in finding or holding good jobs. The majority of Canada's poor fell into the second category. Countering the myth that the poor lacked motivation, the Council argued that most of the poor were willing to get jobs when available but that their poverty would only be alleviated if something were done about their undeveloped abilities or inadequate job opportunities. If society was to benefit from the potential of these people and their children, adult family members must be able to participate in the labour force.[13] Canada's poor were as hidden as America's.[14] Not only an invisible minority, Canada's poor were concealed within long-standing and seemingly intractable national problems like regional disparities and the failed assimilation of Canada's native people. As long as poverty was seen only as one aspect of a host of other problems, the real extent and nature of Canada's poverty remained unknown and unaddressed.

The Council argued that poverty in Canada was not just a human or social problem but an economic problem – an issue of how the benefits of the economic system should be shared and human misery alleviated. Rather than developing more social welfare policies, the Council urged that the anti-poverty focus should be on "*creating income-earning capacities and opportunities among the poor*."[15] The Council concluded that the Canadian economy was simply not producing as much as it could or should because the poor were not being permitted to realize their potential. Unemployment rates of 4 to 5 per cent were unacceptable, especially when regional variations producing rates as high as 7.8 per cent in the Atlantic region in 1964 were factored in. Youth unemployment was of particular concern. The Council recommended that antipoverty policies should be directed at "creating or restoring the economic viability of family units and of individuals not in families."[16]

Why had the economy failed to harness these lost resources? Like American analysts, the ECC blamed "institutional rigidities and attitudes" which had become embedded in policies and practices that tended to make the economy function in a way that discriminated against the poor. The ECC observed that some social welfare policies and programs actually had the effect of being disincentives to getting out of poverty. The Council cited the cost of transportation and relocation, wage discrimination, attitudes, policies and decisions of governments, businesses, unions and other organizations, arbitrary educational requirements, and little investment in upgrading by employers, as all working their hardships on the poor. Particular criticism was directed at provincial welfare systems that required families to suffer unnecessarily before help was available, then made it difficult for the poor to get back into the economic mainstream once they were on welfare. The Council found the systems "highly regressive" with respect to the "non-welfare poor" as well and called for a complete overhaul.[17]

The government's efforts to understand the poverty of its citizens culminated in the Special Senate Committee on Poverty. Travelling across the country to sites as distant and distinct as Fogo Island and Vancouver, the Committee held ninety-three public hearings, received over one hundred briefs and met with hundreds of poor in their homes and at meetings. The Committee concluded that poverty was "our national shame."[18] It confirmed the ECC's concerns that the welfare system was failing by treating only the symptoms of poverty, not the disease. At a cost in excess of six billion dollars, the welfare system did not significantly alleviate poverty, let alone eliminate it. Promising much, it gave little, alienating and dehumanizing the poor in the process. Rejecting two prominent myths, that the poor will be with us always and that poverty will be solved simply through economic growth, the Committee called for policies that would provide immediate relief to those currently in need and that would finally eliminate the causes of poverty. The Committee recommended that the federal government introduce a guaranteed annual income in the form of a negative income tax with a work incentive, coupled with expanded manpower training programs to enhance the income-earning potential of the poor. Like Hellyer, the Committee called for inclusion of the poor in the decisions that affected their lives. The recommendations included special consumer educational programs for low-income Canadians and a comprehensive legal aid program to be cost-shared by the federal and provincial governments. This latter program was to provide everyone below the poverty line with "legal aid as of right and without qualification or contribution."[19]

Poverty was rediscovered in Canada at much the same time as it was in the United States. Its nature and causes were similar, the vocabulary used to describe and discuss it was almost identical, and its solutions lay in the same directions. Canadian poverty was abhorred as being as unnecessary as the American version. The particular

Canadian twist was that poverty was hidden by Canadians' ignorance of themselves, including the nature and extent of poverty, and by historically-based understandings of the country along sectoral rather than economic lines that masked common economic causes and effects. Poverty was buried within other problems, like the Quebec problem, the native problem, the problems of the elderly, women, the disabled, and youth.

More commissions and studies told Canadians stories of discrimination and injustice. In 1966, the Senate Committee on Aging reported that the elderly were among Canada's poorest citizens, often experiencing discrimination in employment, suffering chronic illness, living in substandard accommodation, isolated and alone. The Committee called for a guaranteed annual income to ensure them the financial security necessary to live their lives with dignity.[20] Poverty was also the heritage of decades of failed efforts to assimilate Canada's Indians. Being an Indian or a Metis almost guaranteed that one lived in desperate straits.[21] Being a native man was also likely to mean feeling the brunt of the Canadian criminal justice system. Being a native woman of marriageable age meant facing the prospect of losing her status as an Indian if she married a non-native. In 1964, in yet one more effort to respond to the plight of native people, the federal government commissioned the Hawthorn-Tremblay Report[22] to thoroughly examine the social, economic and political situation of Canada's Indians. The Report of the Royal Commission on the Status of Women drew attention to the circumstances of another groups of Canadians.[23] Being a woman meant one was likely in the financially precarious position of depending on the earning capacity of one's husband and his largesse in sharing his income. Divorce or widowhood could plunge a woman into poverty overnight. To these problems of the elderly, natives and women were added those of Canadians who suffered physical and mental disabilities and were living under the threat, if not promise, of a life of poverty.

By the late 1960s, tensions within the country were becoming acute. The situation in Quebec was becoming increasingly violent as the FLQ backed separatist demands with terrorist tactics. When the government prepared its "White Paper" proposing changes to the much maligned *Indian Act,*[24] many native people felt betrayed. Despite the appearance of consultations during the Hawthorne-Trembley study, Indian leaders believed the government had neither heard nor understood them.[25] No longer willing to accept the white man's explanations nor his solutions for their problems, the native activists became more political, more militant,[26] and more legalistic.

Elsewhere in Canada, restive women were reading Betty Friedan,[27] Simone de Beauvoir,[28] or Kate Millett,[29] talking of sisterhood and liberation. Unfulfilled in their traditional female roles and occupations, many young women took seriously the possibility of careers in male-dominated professions like law and medicine. Feminists began calling for equal pay for work of equal value, decent and affordable day care for their children, release from oppressive marriages, control over their bodies – for recognition as people in their own right, not just appendages of their husbands.[30]

The poor were getting tired of waiting for action on the host of studies into their problems. Militant and self-help organizations began to spring up across the country. In Toronto, An organization of welfare mothers, The Just Society, sat in on the 49th Annual Meeting of the Canadian Welfare Council, hanging placards about hunger and poverty on the backs of their chairs and disrupting the meeting with calls for immediate action on poverty.[31] By 1969 there were over 200 organizations of the poor in Canada. 500 poor people attended the Poor People's Conference in 1971 to discuss what should be done to eliminate poverty. The consumer rights[32], environmental rights, and a host of other movements also had their genesis in the late 1960s and early 1970s, indicia of how widespread the changes were in the Canadian social contract. The personal was political in Canada just as it was in the United States.

What most defined the sixties in Canada were the actions and attitudes of its teen-agers and young adults – Canada's post-war 'baby boom.'[33] As that generation grew up it had a tremendous impact on social institutions that seemed to be taken by surprise by their sheer numbers, let alone their particular attributes as relatively affluent, indulged children. By the end of the 1960s, that cohort was ready to either enter post-secondary educational institutions or the workforce, or both. Neither universities nor the economy were ready for them. Universities, for their part, were expanding rapidly to accommodate the numbers of students expected to enrol. Staffing to meet the new needs was as difficult as getting the physical structures in place. Academics were actively recruited from outside the country, principally the United States, importing a new academic perspective in the process. As they arrived on campuses, students made different demands on the curricula than had their predecessors. Having grown up in relative affluence, many seemed less concerned with mastering knowledge than with becoming 'enlightened.' They expected the university to meet their expectations, whether with respect to programs of study, relationships with their professors, or style of operation. When the university proved slow to adapt, students demanded more say. As they became bolder, radical students accused universities of being agents of the wealthy and powerful and enemies of freedom.

As for the economy, it offered little to the secondary school graduate, post-secondary student looking for part-time or summer work, or post-secondary graduate. Canadian youth were flooding the job market and experiencing frustration in finding work. These youth manifested many of the same characteristics as their counterparts elsewhere. Restless and alienated, hippies hitchhiked across the country during the summers, smoking dope, hanging out in drop in centres hastily put together by sympathetic churches and service agencies, and crashing in student co-ops or homes of newly acquired soul mates. Many were running away from intolerable home situations and were vulnerable to the dangers of street life. They were a problem for police who used vagrancy and drug laws to harass them, and for social service agencies that were suddenly confronted with a massive need for food, shelter, medical care, and legal assistance. Free meals were provided in church basements, accommodation was set up in school gymnasiums, and special counselling, medical clinics, and legal referral services were set up to overcome the resistance of youth in dealing with establishment services. Although Canada was not directly involved in the Vietnam war, Canadian youth added their voices in protest against American foreign policy while sympathetic families sheltered Americans dodging the draft or deserting the armed forces. A New Left movement began to emerge in the country introducing a new form of radical politics. The Waffle, the youth wing of the New Democratic Party (NDP), threw its support behind the Quebec separatists. Canadian youth were alienated, betrayed by their families, their communities, and the economy. They were becoming increasingly militant in expressing their contempt for the world they were expected to enter as adults. Campuses were fraught with student unrest, sit-ins, and protests. In 1969, campus unrest climaxed in violence at Sir George Williams University as a sit-in turned into a riot that ended in arson causing millions of dollars of damage. As the 1970s began, more violence in Quebec evoked repressive measures from the establishment. Violence in both Canada and the United States compromised the moral high ground that radicals had enjoyed and the 'power structure' reasserted itself.

Before problems reached this pitch, Canada was a country of promise. In the aftermath of Canada's centenary celebrations with its highly successful international exposition, Expo 67, Canadians believed that their country had come of age and that they could and should do something about their social problems.

THE GOVERNMENT RESPONSE

As Canada entered the sixties, Canadian politicians had just concluded a debate as to the best method of protecting basic civil liberties: the existing common law approach to evolving and protecting liberties or a statutory mechanism.[34] John Diefenbaker, the leader of the Progressive Conservative Party in power at the time, had long championed the bill of rights approach and made good on his election promise when, in August 1960, the Canadian Bill of Rights was passed. Although for the next decade, the legislation was given little effect and was treated with some cynicism, it presaged the growing interest of Canadians in their relationship to their government.

When Lester B. Pearson won a minority government in 1963, the political landscape began to change dramatically. Pearson's passionate interest was national unity[35] and it led his government to establish the Royal Commission on Bilingualism and Biculturalism in 1963.[36] Work of the Commission contributed to the realization by Canadians that the country was in danger of disintegrating if it did not come to terms with the 'French fact' – the emergence of a new Quebec. Strengthening Canadian unity seemed to mean constitutional change, and with it, a domestic process for constitutional reform and the entrenchment of a Bill of Rights. Strengthening Canada also seemed to mean differentiating it from its powerful southern neighbour. Canada's cultural and economic identity were topics of concern, with foreign ownership of Canadian corporations being a particularly pressing matter.

With the NDP holding the balance of power in Parliament, Pearson's government was forced to lean to the left and introduce a series of measures that further developed Canada's social security system.[37] During the mid-sixties, the Canada and Quebec Pension Plans, supplements to Old Age Security, a national Medicare program, and a educational upgrading legislation were all put in place. Most important was a powerful, omnibus piece of legislation, the *Canada Assistance Plan Act* (CAP), which proclaimed in its preamble that "the prevention and removal of the causes of poverty" were the concern of all Canadians. [38] Administered by the Department of National Health and Welfare, CAP enabled the federal government to assist provinces with the costs of many social welfare initiatives that were normally provincial responsibilities. This legislation was critical to Canada's anti-poverty and social justice efforts. It was as close to the *Economic Opportunity Act* as this country would get.

As the decade progressed, Canada followed the American lead and began to adopt the vocabulary and some of the strategies of the American War on Poverty. To provide leadership to Canada's antipoverty campaign, Pearson established The Special Planning Secretariat of The Privy Council.[39] It worked from four operating principles:

- that a properly constituted society is the foundation for individual freedom;
- that any war on poverty must be national in scope with all the elements of society taking part;
- that poverty is a far broader condition than just loss of economic opportunity; and
- that it is not a question of how much Canada can afford to pay toward eliminating poverty; it is a question of eliminating it altogether.

The structure of the Canadian war office was minimal – only ten officers and a small budget. Its function was not to replace any of the existing provincial, municipal, or not-for-profit agencies already working on poverty issues but to assist all of those players in coming together in a marketplace of ideas and experiences. As Bob Philips, head of the Secretariat, put it, bureaucrats would not lead the crusade against poverty; Canadians would.[40] The key job for people such as himself was to put together information that other people could use, whether those people were in other levels of government, in the not-for-profit sector, or simply individuals acting in their personal capacities. While this might seem an odd priority, at the time there was very little information available about contemporary issues in Canada. Canadians tended to rely on American research, assuming that the characteristics of the problems in both countries would be much the same. It was not unreasonable for Phillips to consider the gathering of Canadian information to be in itself revolutionary.

Phillips described the Canadian antipoverty effort as being founded in the belief that

> [E]qual opportunity and the realisation of basic human needs and full personal potential is the right of every Canadian, regardless of his place or station of birth.[41]

Everyone should have the opportunity to realize one's particular talents, aspirations, and fortune in life. In comparing the Canadian and American efforts to eradicate poverty, Phillips argued that most differences were of degree rather than kind, with the one particular exception of the limitations imposed on the federal government by the Canadian constitution. The Canadian form of federalism made it impossible to do the same kinds of things with the same kind of structure in this country as was done in the United States. The kind of centralized direction that had been key to the American War on Poverty was not possible in Canada. Phillips also noted other, less marked differences between the two approaches. The Americans emphasised economics, race relations and civil liberties whereas Canadians emphasized youth unemployment. He also mused that the American concept seemed to envision the Great Society as being the way of life enjoyed by the American middle class of the day and the one to which the poor aspired. Philips contrasted that to the Canadian anti-poverty campaign's more revolutionary purpose of re-examining the nature of society and eradicating any evil found within it.

Canada's flagship program was the Company of Young Canadians (CYC), established in 1965 and modelled after the American Peace Corps. Philips was optimistic for the organization's radical future. As he saw it, the CYC was being run by young Canadians themselves, albeit with a council that was two-thirds elected. The organization was to "question vested interests, create embarrassment and occasionally shake the power structure." In short, one of the purposes of these young Canadians was "shit-disturbing."[42] CYC workers were to work with those alienated from society to understand the reasons for their disaffection, to see what insights their philosophies might offer, and then, if possible, to improve communications between them and other elements of Canadian society. Philips recognized that the government had set up the possibility of a social protest movement that could bite the hand that fed it. It would seem from subsequent events, though, that his understanding and that of the government were fundamentally at odds. Rife with conflicts, the Company was destined to fail. However, in its short lifetime, it managed to incubate a concept of community development and instil it in a cadre of staff and volunteer activists who remained committed to new ways of analyzing issues and undertaking social action even after they left the Company.

The CYC version of community development was a repudiation of the 'band-aid' approach to dealing with social problems that characterized conventional social work.[43] The Company did not see itself as providing services that made it easier for people to function within existing social arrangements. Rather, the Company saw its job as organizing people to bring about fundamental changes in those arrangements. It was very much an Alinskyesque view of organizing that believed that people were capable of reaching the right decisions for themselves and that those decisions were, by definition, the right decisions. The community developer's role was to act as a catalyst in giving this basic decision-making right and power back to those who had been deprived of it. In organizing the poor and minorities, the Company devoted itself to bringing about total and radical social change – in short, "the revolution."[44]

In establishing its modus operandi, the CYC drew heavily from the work of a number of international, American, and student organizations including Canadian University Services Overseas (CUSO), Crossroads Africa, Canadian Union of Students (CUS), and the Student Union for Peace Action (SUPA). SUPA, the Canadian answer to the radical American Students for a Democratic Society (SDS), was already involved with several community development-type projects and provided a working model of the concept. At the time, SUPA served as both the locus of the 'New Left' in Canada, and as the conduit for introducing radical American values and tactics into the Canadian student movement. Some people hoped the CYC would be a vehicle for organizing a mass 'New Left' movement in Canada. The CYC drew on the ideas and experiences of these student organizations and hired SUPA leaders for key staff positions. During the next several years, the CYC took on a number of community development projects. Some could hardly be called more than 'band aids,' but others contained at least some of the elements of community development that the Company radicals promoted. By working on these projects, staff and volunteers gained important skills in analyzing issues, identifying the powers and influences in a community, strategizing, and understanding how to mobilize communities of interest. Though many staff and volunteers left the CYC disillusioned with the organization, a number became seasoned social activists whose influence extended to others involved in social justice issues – an influence that continues to be felt in Canada today.

Although important social security legislation was passed, an antipoverty secretariat established, and a radical national community development agency launched during the sixties, no real antipoverty campaign ever got off the ground in Canada. A Federal - Provincial conference on Poverty and Opportunity in April 1965 was still-born.[45] The CYC was moribund by 1970. The studies of the Secretariat were added to the growing pile of reports from other government departments, special task forces, Senate Committees, and Royal Commissions. Indeed, more than one writer was compelled to note that "if press campaigns, speeches, reports and inquiries could beat the enemy, by late 1969, poverty in Canada as well as the United States would have been dead, as extinct as the dodo."[46] While Canadians grew tired of the inevitable and expensive government commission on the latest problem of the day, these reports, coupled with work of academics,[47] provided Canadians with concrete information and analysis about Canadian problems from a Canadian perspective. Scholars, policy makers, and activists had access to information and analysis that was indigenous – they no longer had to extrapolate from American insights. Not that government data and analyses were universally endorsed. These reports fuelled debates as to the real extent of the nation's poverty, where to draw the 'poverty line,'[48] and what to do about it. Critics challenged assumptions, contested facts, and countered conclusions, often giving a human face to issues that were being presented as technical. Soon after the Hellyer report was released, the executive director of the Canadian Welfare Council alleged that the welfare system was being made the scapegoat for the many factors that contributed to the perpetuation of poverty: woefully inadequate minimum wage legislation; sick and uneconomic industries operating by virtue of protective tariffs; retraining programs that offered too little, too late; and tax reforms blocked by powerful lobbyists.[49] Adams, a bone fide indigent cum journalist, [50] and several colleagues prepared *The Real Poverty Report* telling Canadians that their former employer, the Senate Committee on Poverty, was side-stepping the issue of the actual "production of poverty" in Canada. But despite these and other efforts,[51] no unifying analysis emerged to explain Canada's poverty.

As the decade was coming to a close, the growing social discord and the issues it reflected dominated the public agenda. Canada was ready for its own Kennedy – a charismatic leader who could pull the country together. Canadians saw that leadership in Pierre Elliott Trudeau who replaced Pearson as leader of the Liberal Party. Trudeaumania swept the country, culminating in Trudeau's election as Prime Minister in April 1968.[52] Announcing his government's commitment "to the objectives of a just society and a prosperous economy in a peaceful world…,"[53] he galvanized the imaginations of Canadians. His goal was to make Canada "a humane, caring, freedom-loving society of many peoples, traditions, and beliefs."[54] Most particularly, Trudeau wanted equality "for all Canadians regardless of the economic region in which they lived, and regardless of the language that they spoke – French or English."[55] Adopting American rhetoric, the Prime Minister pledged that his government would "identify the root cause of the problem of poverty, of inflation and the like and shoot at them."[56] But, Trudeau's vision was broader than an antipoverty campaign. He espoused greater equality for minorities and for those majorities, like women, who were treated as minorities.[57] Again, equality meant equality of opportunity:

> For where is the justice in a country in which an individual has the freedom to be totally fulfilled, but where inequality denies him the means? And how can we call a society just unless it is organized in such a way as to give each his due, regardless of his state of birth, his means or his health?[58]

Like America's Great Society, Canada's Just Society called for equality of opportunity and with it, the elimination of poverty. Trudeau found Canada an ideal country for a policy of greater equality of opportunity. Not only was it rich in resources and diversity, but it had a political tradition that was balanced between conservative and socialist tendencies. Canadians recognized the need for both government and the private sector, and acknowledged the government's role in protecting the weak from the strong and the disadvantaged from the well off.[59] Trudeau placed great stock in lawmaking as a way "to improve the lot of flesh and blood human beings."[60]

Although the Trudeau government continued the Liberal tradition of improving financial security by introducing such measures as unemployment insurance, family allowance increases, and a child tax credit, the real thrust of the Trudeau government's program was to broaden social policy to embrace quality-of-life issues.[61] He introduced into Canadian policy making, a form of planned governing based on multidisciplinary systems analysis, studies to identify desired 'futures' and ways of achieving them, and systemic action. To implement this new approach, Trudeau encouraged the hiring of a new type of bureaucrat – professional social reformers.[62] Under the new 'rational' approach to policy-making, much was done for various sectors of Canadian society. The government sought to improve the conditions of women through a wide variety of measures including repealing provisions in the Criminal Code prohibiting the dissemination of birth control information and introducing provisions allowing for therapeutic abortions. Trudeau appointed a minister responsible for the Status of Women, incorporated maternity benefits into the unemployment insurance plan, introduced the concept of 'equal pay for equal work' into the labour code, allowed income tax deductions for child care costs of working women, and amended rape legislation. The government also began intensive and extensive negotiations with native leaders leading to the involvement of native people in constitutional talks and ultimately to having their ancestral and treaty rights embedded in the *Canada Act 1982*.[63] Major agreements were signed with native people on a regional basis settling land and treaty rights issues and conveying powers of local self-government. Seniors, the handicapped, and refugees also enjoyed special consideration as the indexing of pensions, special housing programs, and new immigration legislation were introduced. Early in the 1970s the government brought in its multiculturalism policy honouring Canada's pluralistic approach to democracy and providing funding to ethnic associations to assist them in preserving their values and traditions. Canada's criminal law underwent major revisions decriminalizing homosexual practices between consenting adults, abolishing capital punishment, and creating the offense of inciting hatred against a person by reason of his belonging to a racial or religious group. The Canadian correctional system underwent reforms and new legislation was introduced to provide delinquent youth with more rights.[64] Equality through constitutionally guaranteed rights was Trudeau's particular hobby horse. His first effort to trump former Conservative Prime Minister John Diefenbaker's *Bill of Rights* [65]was the *Canadian Human Rights Act.*[66] But Trudeau's triumph was the 1982 amendment to the Canadian constitution entrenching the *Canadian Charter of Rights and Freedoms,*[67] with its controversial equality provisions.

Not content simply to legislate, the government introduced a host of new programs to serve Canadians. Various government departments were involved in providing these initiatives but the Department of National Health and Welfare through its CAP responsibilities assumed a leadership role and served as a modest version of the Community Action Program of the Office of Economic Opportunity. Well-suited to this task, Health and Welfare had, since the early 1960s, been funding "inventive approaches to the solutions of social problems and the provision of welfare services," the building of the capacity to carry out such activities, and "the participation of service users in the solution of their own problems."[68] That department, more than others, was staffed by the kind of professional reformers that characterized the American social reform paradigm and their initiatives tended to look very much like their American counterparts.[69] The department was advised by the National Council on Welfare, a committee of 21 people, half of whom were poor. In 1968, the Council prepared an extensive policy statement addressed not just to the federal government, but to provincial governments and all organizations in the welfare field.[70] It covered income security programs, social services, social planning and integration of economic and social aspects of national life. A catalogue of needed reforms, it cautioned that "all is changing" – the shape of the country, ideas of welfare, the form of the family, poverty, technology and citizen involvement. The Council called for more effective involvement of the public in policy-making and for a "frank and forthright dialogue between all sectors of society" in preparing for action.[71] Adopting the philosophy that government programs should be more readily accessible and that those who needed those services should participate in the design and implementation of them, [72] Trudeau's government funded programs which helped natives, women, immigrants, seniors and others to organize their communities to solve their own problems.[73]

Programs that proved to be of particular importance to the emergence of neighbourhood legal services and public legal education were put in place to ease the problem of youth unemployment. The first of these, Opportunities for Youth (OFY), was a summer works program established in 1971 to encourage youth to undertake activities beneficial to the community.[74] Liberal partisans have claimed it was "[t]he most extensive program of its kind ever undertaken in the world, and certainly the most successful."[75] From 1971 to 1974 OFY provided millions of dollars to almost 100,000 young people undertaking almost 10,000 projects in thousands of communities across Canada. A second grant program, the Local Initiatives Program (LIP), provided funding for projects identified by local communities.[76] Youth were often engaged in these projects as well. Between them, these two funding programs stimulated rapid development of the not-for-profit sector in Canada and launched or supported a broad range of innovative programs, including some of the first PLE programs in Canada.

If Canada had no war on poverty, it had at least a diversity of movements to promote equality for Canadians, a federal government that was ostensibly committed to social reform, and activists throughout the country politicizing issues and organizing community responses to local problems. While professional reformers were in evidence in these activities, Canada's was a children's crusade.[77]

CONCLUSION

During the 1960s and 1970s, leaders of significant elements of Canadian society questioned the social ordering of the country, challenging assumptions about the inevitability of that structure. Quebec nationalism, native self-determination, and feminism are but three prominent examples of movements that acquired new energy during that period. Canadians engaged in the same sorts of analyses of problems as

Americans, politicizing an array of matters that had formerly been considered uncontestable. Canadians responded to their social problems with tempered indignation and set about revising laws and introducing programs and services to open up opportunities for those who were missing out on the fundamentals of Canadian citizenship. It was an approach very like the new social reform paradigm introduced in the United States.

Despite an impressive list of accomplishments, and even with Trudeau's vision and governmental support, the Canadian effort at social reform and renewal was *ad hoc* and disjointed.[78] It lacked the kind of leadership, professional coordination and direction, and abundant resources that the omnibus *Economic Opportunity Act* and the infrastructure of the Office of Economic Opportunity provided the American campaign. Canada activists lacked a unifying analysis to direct their attacks on problems. Rather, they drew from a melange of socialist and liberal ideas and from analyses borrowed from the United States. Each sector of Canadian society responded to the issues that happened to catch their attention solving them in ways that seemed appropriate. More profound was the absence in Canada of constitutionally backed rights. Without them, Canadians could not demand entitlements; they could only pursue privileges. This is not to say that no useful reform occurred. The federal government's legislative, policy development, administrative, and, funding initiatives had major impacts on the country. By providing funding for community organizations, the government launched a new type of social action that had far reaching consequences. Through these new agencies, political parties, religious bodies, and sector associations, thousands of Canadians experienced first hand the exhilaration and despair of fighting for causes they thought just. By shutting down the Company of Young Canadians and, more seriously, by invoking the *War Measures Act*, the government made it clear that there were limits to the manner in which Canadians could take matters into their own hands.

With the proclamation of the *Canadian Charter of Rights and Freedoms* in 1982, a new era began, one which activists have approached with deliberateness, having learned much from the successes and failures of the social justice movements to date. The Charter has also placed lawyers in a position of greater prominence in fighting for equality in this country today than they enjoyed during the tumultuous years in which social justice was at least one of the country's prominent issues.

Chapter 5 Notes

[1] T.S. Axworthy & P.E. Trudeau, eds, *Towards a Just Society: The Trudeau Years* (Markham, Ontario: Viking, 1990) at 127 also chapters by G. Pelletier, "1968: Language Policy and the Mood in Quebec" at 213-214; P.E. Trudeau, "The Values of a Just Society" 357 at 358; F. Ouellet, "The Quiet Revolution: A Turning Point" 313 at 316- 319.

[2] P. Vallieres, *White Niggers of America* (Toronto: McClelland and Stewart, 1971).

[3] P.E. Trudeau, *supra* note 1 357 at 358. See also E. Kierens, "Great Societies and Quiet Revolutions" in J. Irwin, ed., *Thirty-fifth Annual Couchiching Conference: Great Societies and Quiet Revolutions* (Ottawa: Canadian Broadcasting Corporation, 1966) 116.

[4] For commentaries on this phenomenon, see for example, L. Bergeron, *The History of Quebec: A Patriote's Handbook* (Toronto: New Canada Publications, 1971); G. Pelletier, *The October Crisis* (Toronto: McClelland and Stewart, 1971); and W.S. Tarnopolsky, *The Canadian Bill of Rights*, Second ed. (Toronto: McClelland and Stewart, 1975).

[5] *War Measures Act*, S. C. 1914 (2nd session) 1914, c. 2.

[6] which at the time were seen to include the interlake region of Manitoba, Newfoundland, Prince Edward Island, the northern half of Nova Scotia, and Northeast New Brunswick. L.E. Poetschke, "Regional Planning for Depressed Rural Areas - The Canadian Experience" in J. Harp & J.R. Hofley, eds, *Poverty in Canada* (Scarborough: Prentice-Hall, 1971) 357.

[7] *Agricultural Rehabilitation and Development Act*, S. C. 1960-61 1961, c. 30.

[8] K.S. Wood, "Profile of Poverty in Nova Scotia" in W.E. Mann, ed., *Poverty and Social Policy in Canada* (Toronto: The Copp Clark Publishing, 1970) 226 at 227 - 228.

[9] Economic Council of Canada, *Fourth Annual Review: The Canadian Economy From the 1960's to the 1970's* (Ottawa: Economic Council of Canada, September 1967) at 23.

[10] P.T. Hellyer, *The Report of the Federal Task Force on Housing and Urban Development* (Ottawa: Government of Canada, January 22, 1969) at 11.

[11] P.T. *ibid.*. at 13.

[12] Economic Council of Canada, *supra* note 9 at 2-11.

[13] Economic Council of Canada, *Sixth Annual Review: Perspective 1975* (Ottawa: Economic Council of Canada, September 1969) at 108-117.

[14] Economic Council of Canada, *Fifth Annual Review* (Ottawa: Queen's Printer, 1968).

[15] Economic Council of Canada, *supra* note 13 at 108.

[16] Economic Council of Canada, *supra* note 13 at 117.

[17] Economic Council of Canada, *supra* note 13 at 119.

[18] D.A. Croll, *Poverty in Canada: Report of the Special Senate Committee on Poverty* (Ottawa: Senate, 1971) at vii.

[19] D.A. Croll, *ibid.*. at xx.

[20] D.A. Croll, *Senate Report on Aging* (Ottawa: The Senate of Canada, 1966).

[21] See M. Campbell, *Halfbreed* (Toronto: McClelland and Stewart, 1973).

[22] H.B. Hawthorn & M.A. Tremblay, *A survey of the contemporary Indians of Canada : a report on economic, political, educational needs and policies* (Ottawa: Indian Affairs Branch, 1966).

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[23] *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: Information Canada, September 28, 1970).
[24] *Indian Act*, S.C. 1951, c. 29.
[25] See for example, H. Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M. G. Hurtig Ltd., 1969) and K. Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Minister of Supply and Services Canada, 1978) at 77.
[26] M. Posluns, "Conflict at Akwesasne" (1971) 47 Can. Welfare 4.
[27] B. Friedan, *The Feminist Mystique* (New York: W. W. Norton and Company, Incorporated, 1963).
[28] S.d. Beauvoir, *The Second Sex* (Paris: Gallimard, 1949).
[29] K. Millett, *Sexual Politics* (New York: Doubleday and Company, Inc., 1969).
[30] *Supra* note 23.
[31] "The Just Society" (1969) 45 Can. Welfare 4.
[32] G. Kane, "The Role of Special Interest Groups" in F.B. Sussmann & B.W. Morse, eds, *Law and the Citizen: Looking to the 80's* (Ottawa: University of Ottawa Press, 1981) 15.
[33] The discussion in this section is drawn chiefly from D. Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996); M. Kostash, *Long Way from Home: the story of the sixties generation in Canada* (Toronto: J. Lorimer, 1980); R.J. Marcus, "Youth Services Can Be Relevant" (1969) 45 Can. Welfare 13; John Howard Society, "The Use of Marijuana" (1969) 45 Can. Welfare 14; "The Next Adults" (1969) 45 Can. Welfare 4; D. Shackleton, "The Mayor's Committee" (1969) 45 Can. Welfare 15.
[34] This discussion draws from W.S. Tarnopolsky, *supra* note 4 and D. Hoehne, *Legal Aid in Canada*, (Lewiston, NY: The Edwin Mellen Press, 1989).
[35] J.A. Munro & A.I. Inglis, eds, *Mike; the Memoirs of the Right Honourable Lester B. Pearson*, vol. 3 (Toronto: University of Toronto Press, 1975) at 237-269.
[36] Canada. Royal Commission on Bilingualism and Biculturalism. et al,, *Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer, 1967).
[37] I.A. Stewart, "Global Transformation and Economic Policy" at 108 and J. Coutts, "Expansion, Retrenchment and Protecting the Future: Social Policy in the Trudeau Years" 177 at 178-179 in T.S. Axworthy & P.E. Trudeau, *supra* note 1.
[38] *Canada Assistance Plan*, 1966-1967 1966, c. 45.
[39] This discussion is drawn chiefly from B. Phillips, "Canadian Views on the Great Society" in J. Irwin, ed., *Thirty-fifth Annual Couchiching Conference: Great Societies and Quiet Revolutions* (Couchicing, Ont: Canadian Broadcasting Corporation, 1966) 89. See also E. Kierens, *supra* note 3 at v.
[40] B. Phillips, *ibid.*. at 95.
[41] *Ibid.*
[42] *Ibid.* at 94 - 95. See also D. Hoehne, *supra* note 34 at 104.
[43] The discussion of the CYC was drawn chiefly from B. Phillips, *supra* note 39. See also I. Hamilton, *The Children's Crusade* (Toronto: Peter Martin, 1970).
[44] M. Daly, *The Revolution Game: The Sort, Unhappy Life of the Company of Young Canadians* (Toronto: New Press, 1970) at 34.
[45] I. Adams, *The Poverty Wall* (Toronto: McLelland and Stewart, 1970).

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[46] W.E. Mann, ed., *Poverty and Social Policy in Canada* (Toronto: The Copp Clark Publishing, 1970) at vii.

[47] Such as J. Porter, *The Vertical Mosaic: An Analysis of Social Class and Power in Canada* (Toronto: University of Toronto Press, 1965).

[48] By 1979, these had settled into five principal lines. See D.M. Caskie, "The Extent of Poverty in Canada" in J. Harp & J.R. Hofley, *supra* note 6 at 4.

[49] "News and Comment" (1969) 45 Can. Welfare 26 quoting an excerpt from a speech given by Reuben C. Baetz to the Public Service Commission of Canada.

[50] In 1970, many of these were republished with fresh material in I. Adams, *The Poverty Wall* (Toronto: McLelland and Stewart, 1970).

[51] eg J. Porter, *supra* note 47.

[52] T.S. Axworthy, "'To Stand Not So High Perhaps but Always Alone': The Foreign Policy of Pierre Elliott Trudeau" in T.S. Axworthy & P.E. Trudeau, *supra* note 1 at 18.

[53] An election promise that was confirmed in the Canada, House of Commons *Speech from the Throne* (1968). See D. Hoehne, *supra note 34* at 94, footnote #24.

[54] Quoted in T.S. Axworthy & P.E. Trudeau, *supra* note 1 at 5.

[55] P.E. Trudeau, *supra* note 1 357 at 360.

[56] Pierre Elliot Trudeau, quoted in D. Hoehne, *supra* note 34 at 98 citing P.E. Trudeau, *House of Commons* 1969).

[57] J. Hebert, "Legislating for Freedom" in T.S. Axworthy & P.E. Trudeau, *supra* note 1, 131 at 131.

[58] P.E. Trudeau, *supra* note 1 at 358.

[59] P.E. Trudeau, *supra* note 1 at 359.

[60] J. Hebert, *supra* note 57 at 147.

[61] J. Coutts, "Expansion, Retrenchment and Protecting the Future: Social Policy in the Trudeau Years" in T.S. Axworthy & P.E. Trudeau, *supra* note 7 at 177, 191-195.

[62] D. Hoehne, *supra* note 34 at 166.

[63] *Canada Act 1982*, (U. K.), 1982 c. 11.

[64] J. Hebert, *supra* note 57 at 137-140.

[65] *The Canadian Bill of Rights*, S.C. 1960 c. 44.

[66] *Canadian Human Rights Act*, S.C. 1967-77 c.33.

[67] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U. K.), 1982, c. 11.

[68] D. Hoehne, *supra* note 34 at 106 quoting John Munro, Minister for National Health and Welfare.

[69] D. Hoehne, *supra* note 34 at 105.

[70] "Social Policies" (1969) 45 Can. Welfare 6 at 7.

[71] Canadian Welfare Council, *Social Policies for Canada, 1968* (Ottawa: Canadian Welfare Council, 1968) excerpted in *ibid.*

[72] J. Coutts, *supra* note 37 at 191.

[73] J. Hebert, *supra* note 57 at 135-137.

[74] Trudeau quoted in J. Hebert, *supra* note 57 at 140 142.

[75] J. Coutts, *supra* note 37 at 192.

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[76] J. Coutts, *supra* note 37 at 193.

[77] An allusion to I. Hamilton, *supra* note 43.

[78] Poetschke laments the lack of overriding direction to the efforts of ARDA. *Supra* note 6.

Chapter 6 - Access to the Law

The Canadian response to the broad demand for social justice was more progressive on the legislative front than on the legal services front. When it came to using lawyers to fight for justice for the poor, the Canadian response was much more modest, almost inconsequential. In engaging legal services in the cause of the poor, Canadians were starting from a position well behind their American neighbours. Canada had no proper legal aid system and little history of law school involvement with the problems of the poor on which to build.[1] This was entirely new terrain and, for the most part, it was explored with caution.

As was the case in the United States, the main players in the legal services movement in Canada were the government, the legal profession and the law schools, but the dynamics among these players were somewhat different. Two federal government departments vied for supremacy in handling the legal aid responsibility; governments and law societies in each of the provinces had to be sold on the national program;[2] and law schools played a critical role in testing the neighbourhood legal service model. When the various power plays between these sectors concluded, the gains of the early years of the legal services movement in Canada consisted of a national infrastructure for providing basic civil and criminal legal aid services to the poor, supplemented by law student clinics and a few aberrant independent legal services agencies.[3] The objectives of these services varied with some making no pretext of doing more than facilitating procedural justice while others were committed to using the law to attack social injustice. In the latter instance, the new reform paradigm took much the same shape as it had in the neighbourhood legal services in the United States except that the legal context in Canada was not as conducive to using the courts as a major strategy for fighting poverty. Legal activists would have to put more emphasis on their preventive law work – that nebulous grouping of community organizing, social action, and public legal education.

HISTORY OF LEGAL AID

The birth of legal aid in Canada was slow and difficult, aided by mid-wives who were sometimes more motivated by self-interest than by the interests of their patient. Because, legal aid is a provincial responsibility, what was delivered at the end of a prolonged labour was more a mongrel litter of legal aid programs than a healthy progeny bred to show certain desired characteristics.[4] The process began in Canada in the first decades after the turn of this century when ethnic, religious, social services, and labour groups began pressing the government for assistance in covering the cost of providing legal services to the indigent. These groups met with little response, so legal aid developed slowly and in a haphazard way across the country. In the common law provinces, civil legal aid derived mainly from the English law's *in forma* *pauperis*[5] procedure that relieved the poor of court fees and entitled them to the free services of a lawyer if appointed by the court. *In forma pauperis* was a charitable concept of service that relied on a lawyer's sense of professional responsibility.[6] Though little used, the concept was drawn on in some provinces to form embryonic legal aid protocols, such as the Alberta *Needy Litigants Rules*.[7] Early legal aid coverage for criminal matters was the prerogative of the presiding judge, though, in some provinces, counsel were appointed by the provincial government and paid for their services at a lower rate than normal.

As early as 1922, the Canadian Bar Association (CBA) attempted to move legal aid out of the realm of charitable service by proposing an American-style public defender service in criminal courts. In support of this broader, social responsibility approach to legal aid, advocates argued that providing legal assistance to the poor was not just an issue of the efficient administration of justice – that is, of ensuring that everyone had access to the courts. Legal aid was an issue of preventing "the undesirable consequences of the social situation of many disadvantaged in society."[8] The stakes were high: failure to meet this challenge might lead to nothing short of revolution and with it, the loss of some of Canada's best social institutions.[9] But none of the federal or provincial governments adopted the CBA's views nor their proposed public defender program and the matter was put in abeyance.

The CBA picked up the legal aid issue again some ten years later when the level of demand for services by the poor was reaching sufficient proportions to be troublesome for the ordinary practitioner. By then the CBA was much less enamoured of the public defender system and the concept of salaried lawyers, with the loss of independence that implied. The profession was interested only in methods of legal aid that were voluntarily provided and controlled by the Bar. The view of the profession became set in this position, a position it has never wholly abandoned since. The legal profession also remained sceptical of the reformed *in forma pauperis* system being administered by the bar in England. Seeing no adequate model elsewhere, the CBA developed a home grown program.

Since the junior bar bore the brunt of the burden of providing legal aid services, they took up the responsibility for establishing legal aid offices across the country. In May 1936, the first such office was opened in Toronto. Its purpose was to provide free legal services to people referred from the city's welfare department. The CBA Young Lawyers found that response in other parts of the country was uneven, varying with the local perception of needs and the practicalities of meeting those needs. The *ad hoc* development of legal aid continued with coverage ranging from those offering only legal advice to those providing assistance only on either criminal or civil matters. Schemes consisted of the courts appointing lawyers to serve as counsel for indigents accused in criminal proceedings, *in forma pauperis* rules, and a few embryonic legal aid programs administered by municipal welfare departments or organizations, or by the bar.

Legal aid failed to develop significantly until World War II servicemen began experiencing legal problems that they could not attend to while in combat. Both the legal profession and the federal government recognized a responsibility to alleviate this problem and co-operated in the development of a nation-wide program that shared common standards but which was administered provincially. Although this structure might have been transformed to become a national legal aid program for the poor, both the legal profession and the government considered that their responsibilities ended with the end of the war and withdrew from any active involvement with legal aid. Legal aid was returned to provincial bar associations to provide for as they saw fit. More jurisdictions began offering legal aid services and provincial governments became more involved in the provision of criminal legal aid, but little changed in the concept of legal aid during the forties. Demand for service continued to grow until the legal profession turned to the government for assistance. In 1951, by an amendment to the *Law Society Act*,[10] the Government of Ontario put the first statutory legal aid plan in place.[11] Still provided by the profession on a volunteer basis, it was operated by the Law Society through a series of local legal aid committees.[12] The provincial government provided a modest grant to cover administrative expenses and absorbed the cost of copies of transcripts taken at preliminary hearings.[13]

Until the sixties, the provision of legal assistance to the poor was largely a charitable incident of a lawyer's professional responsibility, and any legal aid service was a voluntary program run by a concerned law society or local welfare agency. The purpose of these services was always to ensure that the very poor would not be denied access to basic legal assistance simply because they could not afford to pay for them. There does not appear to have been any recognition that the poor might encounter other barriers to accessing justice. At the time, the prevailing view of the law was positivist, and law and justice were seen as separate.[14] Access to the law was not held out as providing access to substantive justice, only to procedural justice.

CONTEMPORARY LEGAL AID

With the turmoil of the sixties came the concern that the prevailing *ad hoc* approach to legal aid was inadequate. This, plus the increasing burden on the legal community of providing legal aid, led to a major effort to establish formal legal aid programs in all the provinces and territories. Again, Ontario led the way,[15] passing the *Legal Aid Act* in 1966,[16] Canada's first legal aid statute setting up the country's first "judicare" service.[17] The joint responsibility of the Law Society of Upper Canada and the Attorney General of Ontario, the plan met lawyers' concerns that they remain in control of the service and that participation in it remained voluntary. The plan had three key features:

- there was no arbitrary means test. Anyone could apply for legal aid but their financial position would be assessed by the government welfare department to determine the extent of their ability to contribute to their legal costs;
- the client had choice of counsel (from a panel of those willing to take certain types of cases); and
- lawyers' fees were covered by the state in accordance with a tariff (representing approximately 75% of the normal fee charged a client of "modest means") rather than absorbed by the firm.[18]

The new service recognized that society, not just lawyers, shared the responsibility for ensuring access to the legal system. Like its predecessors, judicare operated within the traditional understanding of legal aid as an aspect of the proper administration of justice. Its goal was to ensure that the poor were in the same position as anyone else in society (or, at least, "a man of modest means") to advance legitimate claims or to defend themselves.[19]

Use of legal aid increased almost ten-fold within the first year of the implementation of judicare indicating that a major step had been taken to improve access by the poor to the services of lawyers for certain legal problems. Significant as this was, it represented improvement in access to procedural justice, not substantive justice. The new concept of legal aid did not go so far as to enable the poor to question how well the legal system met their needs, whether the law was fair, nor how the law might be used to confront the causes of their plight. Judicare did not enable the poor to use the law to address the underlying causes and conditions of their poverty. When the Ontario model was criticized for this failing, the Legal Aid Committee of the Law Society of Upper Canada responded that the American model which included such features "was never intended to be a 'legal aid' program as presently understood in [Ontario]."[20] Other provinces began to adopt versions of the Ontario model[21] but it was not until 1972, when the Trudeau government became involved in funding provincial programs, that a minimum standard for legal aid in the country was set. With these innovations, legal aid had become the proper subject of social policy, and a matter of right for the poor. Getting even a basic legal aid service in Canada did not fall into place simply nor easily.

Both the Official Opposition and the Liberal government began to show interest in the issue of legal aid in the mid-sixties, prompted largely by the United States Supreme Court's ruling in *Gideon v. Wainright*[22] that no one could be convicted in that country unless represented by counsel. Although the right to retain and instruct counsel without delay was protected under the *Canadian Bill of Rights*,[23] that legislation had several serious limitations. First, it applied only to federal laws and not to any matters falling within provincial jurisdiction.[24] Second, what that legislation really protected was the **freedom** or **power** to retain counsel without interference from the government.[25] The Act did not **guarantee** counsel by imposing a positive duty on the government to ensure that everyone had a lawyer. Third, the Act did not provide for the consequence of a breach of any rights, leaving it up to the courts and the common law to decide what effect the denial of a right actually had. Fourth, judges were reluctant to give the *Bill of Rights* full force and effect. Not being entrenched as part of the constitution, the courts were reluctant to accord it any higher status than any other piece of legislation. They found that the wording of the legislation was too unclear to mean that they were to repeal statutes or even render inoperative specific provisions of legislation. Taking a step like the United States Supreme Court did in *Gideon* would have been out of the question for them.[26]

Enforcing rights was also problematic. For example, a request for a translator to assist in court would necessarily result in at least one adjournment of the proceedings, if not more. The accused would have to return to court another day and incur any costs associated with doing so. In rural areas, this could include significant transportation and accommodation expenses to say nothing of time lost from tending lines, fishing, farming, or other employment. If the accused was in custody, these delays extended the time he would serve before trial and might not be counted toward his sentence, if convicted.[27] Seeking a remedy for a violation of a right, whether through measures like a habeus corpus application, an appeal, or a prosecution for false arrest or imprisonment, generally required the intervention of a lawyer, making the *Bill of Rights* of even less use to the indigent in the absence of an adequate legal aid plan.

The federal government studied the issue of legal aid for several years, but only in the context of concerns like the *Gideon* case, the reform of Canada's correctional services, and the abolition of capital punishment.[28] During debates on these topics a wide variety of justifications for legal aid was offered. In the debate on the death penalty, for example, it was argued that the legal system was biased against the poor and that poverty must not be a "one-way ticket to the gallows."[29] The accused should have "as good a defence as the case against him financed by the state."[30] The government's typical response in these debates was to suggest that the *Criminal Code* be amended to provide for counsel. But, much as the government studied the question, it did nothing.

If, as Trudeau suggested, justice meant that everybody's essential needs were satisfied,[31] the country's youth and its poor were making it increasingly clear that justice was out of their reach. As external pressures increased, the government had to settle its legal aid policy. By 1969 it was clear that reform of the administration of justice was one of the weapons that the government was going to use to "shoot" at the problem of poverty, attacking the underlying social causes of crime and disorder.

Justice Minister Turner made bold speeches about the problems of the poor at international conferences, but what type of legal aid would the government support, and how? The substantive issues of the policy debate became focused in a contest between the American style of neighbourhood legal services with its government employed staff lawyers working out of community clinics effecting social policy and the judicare model with its government financed but bar controlled and operated use of panels of lawyers in private practice promoting the effective administration of justice. As was the case in the United States, issues of policy were immediately reduced to an issue of power. Who would control legal aid?

As far as the legal profession was concerned, the answer was simple: lawyers had to control legal aid. They had been responsible for legal aid for years and had no intention of turning that responsibility over to anyone else. For the most part, they would also only support a program in which the client had freedom of choice of counsel. That ruled out both the American public defender and neighbourhood legal services models, leaving judicare as the preferred option. The Canadian legal establishment also promoted the latter model claiming it had the added benefits of eliminating the stigma of poverty that attached to public defender-type operations and of permitting the client to contribute to his case in accordance with his ability to pay. For the most part, the bar was victorious in maintaining control over the actual provincial legal aid programs. However, freedom of choice of counsel did not become embedded in the national standards (though professional independence was). As it turned out, in time, some provinces opted for some version of the American NLS model, if only in the form of law student clinics.[32]

As for the federal government, the issue of control centred on which department would carry the responsibility for funding legal aid. Although seven or eight departments had their fingers in the legal aid pie,[33] the two major claimants to this area of service were the Department of National Health and Welfare and the Department of Justice. Neither had a clear mandate and both had to overcome constitutional hurdles in making their claims. Health and Welfare took a strong lead. To overcome the problem of provincial jurisdiction for welfare, the department staked its claim on the overall responsibility for social welfare that the federal government now shared with the provinces pursuant to the Canada Assistance Plan. Health and Welfare was responsible for administering that legislation, so it claimed authority for funding legal aid under CAP agreements with the provinces. However, the CAP legislation was ambiguous as to coverage, so the department could never assert its position with complete confidence.

In advancing its substantive claim to the legal aid file, the Department of National Health and Welfare began from the premise that equality before the law was necessary for a person's well-being and therefore an inherent part of the department's responsibilities. Since equality before the law was predicated on access to the legal system, the department necessarily had authority over legal aid. The department's social reform professionals clearly had done their homework on the legal services project in the United States, warning that a poor person who did not have full access to the law was partially disenfranchised as a citizen. They argued that legal services were also essential to the government's antipoverty policy because they gave the poor access to ways of controlling their lives, transforming people from a state of helplessness to full involvement in society. The Health and Welfare concept of legal aid had five components: preventive services, use of existing and creation of new legal mechanisms; litigation; organization of groups; and representation. This list of functions was seen as being simply those performed by lawyers in the normal course of serving their clients. Services were to be geographically accessible and to assist the poor in recognizing that they had legal problems, that they could take legal action, and that lawyers could be trusted to help.

Health and Welfare criticized conventional legal aid for perpetuating the dependency relationship of the poor on lawyers, negating effective participation of citizens in the making of public policy. Excluding legal services from the CAP program would have the effect of denying their important role in the antipoverty strategy and discourage their inclusion in multi-service delivery approaches that were favoured by provinces at the time. To move their position forward, in 1969, Health and Welfare officials began discussing federal assistance for legal aid programs with their provincial counterparts and began considering the requests for funding for innovative neighbourhood legal clinics that it was receiving from law schools. By 1971, it was funding four: in Saskatchewan, Ontario, Quebec and Nova Scotia.[34] Staffed chiefly by law students, these services had as their central purpose using law as a means of identifying and resolving the social causes of legal problems.[35] In promoting the American model, the department had the organized poor on its side. At the 1970 Poor People's Conference in Toronto, a resolution was passed indicting legal aid as "a system by the legal professional for the legal professional with total indifference to the client – the poor," and promoting neighbourhood law offices instead.[36]

Anxious to protect its otherwise exclusive authority over legal matters at the federal level, the Department of Justice had to overcome the constitutional problem that it did not have jurisdiction over the administration of justice - a provincial responsibility. The department could only claim jurisdiction over legal aid indirectly by drawing on its constitutional responsibility for substantive areas of law, such as the criminal law, and by resorting to its role as the federal department that traditionally dealt with provincial justice ministries and law societies on matters of concern. The department also had direct responsibility for the administration of justice in the territories. To establish its claim to the legal aid file, Justice launched a legal aid service covering criminal matters in the Northwest Territories. In advancing its substantive claim for legal aid, the Department of Justice promoted the continuation and extension of the administration of justice model of legal aid. Its concept of legal aid meant justice was achieved by ensuring that everyone had access to a lawyer to defend his or her rights. To rebut Health and Welfare's appeal to include NLSs in its antipoverty strategy, Justice argued that doing so would treat legal professionals differently from other professionals, like doctors and dentists, who were not required to operate out of multi-service centres. Those centres could operate as referral agencies, linking the poor with legal aid when appropriate. Although the Minister himself did not favour NLSs, warning that they could lead to social action,[37] his department took the position that it would be up to the provinces to decide what kind of legal aid they wanted. Justice did not intend to dictate any particular model.

Efforts to either share or divide responsibility for legal aid between the two departments failed. Thanks in part to a complaint from the Attorney General of Ontario that the Osgoode Hall law school's neighbourhood legal service undermined the Ontario Legal Aid Plan's principle that citizens are entitled to legal advice from a qualified lawyer, the Department of Justice, in 1972, won the intradepartmental contest and claimed the legal aid prize. The establishment of Canada's legal aid system culminated with the signing of the *Federal-Provincial Agreement on Legal Aid in Criminal Matters* in 1973.[38] By the end of the year, the first federal-provincial agreement was signed extending counsel to individuals charged with indictable offences or delinquencies, with offences that could lead to imprisonment or the loss of a job, or with offences under certain federal statutes.[39]

The Department's triumph was a victory for the narrow concept of legal aid as a component of the efficient administration of justice over the more proactive concept of using law as an instrument of social policy. Though Justice Minister John Turner and his successor, Otto Lang, talked the revolutionary talk of using legal services to attack the root causes of poverty,[40] the department did not 'walk the walk.' While access to justice was clearly an essential aspect of a just society, the Department of Justice's analysis of the problems impeding that access was largely technical and administrative, not substantive. That analysis suited most provincial legal aid programs at the time.[41] True to its word, Justice did not limit provinces as to the types of programs they could offer and, as part of its strategy for winning the interdepartmental battle, it had already begun funding community legal services projects. By 1972-73, it was assisting eighteen such clinics, mainly law school based programs staffed by students. Funding these programs and endorsing social action methods were two different things. If department officials were following the American experience, they were learning the opposite lesson to Health and Welfare. As Justice saw it, neighbourhood legal services did not confine themselves to the legal problems of the poor, but instead provoked disruptive social action. Once innovative legal services became dependent on Justice for funding, they came under the shadow of that conservatism. Isolated from the more activist environment of Health and Welfare, they did not receive the kind of support they needed to break through conventional understandings of law and legal practice and to assert themselves as a radical transformative force. Legal aid and independent community legal services would have little, if any impact, on the position of the poor in Canadian society.

Following the American neighbourhood legal services model, Canada's first community legal service programs contained preventive law or public legal education objectives. So, when Justice acquired primary responsibility for legal aid and the projects that went with it, the Department acquired a mandate for public legal education as well. In casting a pall over Health and Welfare's fledgling effort to use legal services to attack the causes of poverty, Justice inflicted a major setback to PLE as well. However, public legal education in Canada had several good years to become established before this setback occurred.

STUDENT LEGAL AID PROGRAMS

While the legal profession was busy establishing judicare schemes in their provinces, law schools were experimenting with the neighbourhood legal services concept through the provision of law student clinics. These first student legal aid programs were spontaneous responses to the times and to the new student radicalism. A new brand of student took law schools by storm. Sharing the general rebellious characteristics of their generation, students were arriving at law schools under the influence of their undergraduate professors, sometimes young American professors with direct experience in the practices borne of the new social reform paradigm. Marxism was capturing the imaginations of political science students, while sociology students were discovering Cloward and Ohlin, or Paul Goodman with his defiant condemnation of society, his legitimization of social conflict, and his call for fundamental changes to society.[42] Some students would have been involved in radical campus politics, community action projects, or the New Democratic Party's Waffle, the Student Christian Movement, or other elements of the emerging New Left movement.

Like their American counterparts, law schools had little to offer their students by way of supportive curriculum, though criminal and family law courses were standard offerings in Canada at the time. It would not be until the early 1970s that poverty law courses, clinical programs, and the like would be in place. Even then, instructors had to draw heavily on American sources and do original research to build up a base of Canadian references.[43] No matter, Canadian law students would not be restrained from doing what they saw as their duty, and they sallied forth to serve the country's unsuspecting poor. By 1969, law schools at York University,[44] the University of British Columbia,[45] and the University of Alberta[46] were experimenting with legal clinics staffed with law students. The first funding for these programs tended to be minimal and came from diverse sources, including the faculties themselves, but shortly after, government student employment programs, the Ford Foundation,[47] legal aid societies,[48] the Department of National Health and Welfare, the Department of Justice, and provincial law foundations[49] began to provide the more substantial funding needed to run proper services.[50] There was enough interest among these various players that, in 1970, six years after the first law and poverty conference in the United States, the Canadian Bar Association hosted a workshop on innovative legal services at its annual national conference. This was the first time representatives of student organizations had a chance to meet and discuss their programs and issues in person.

At the Canadian Bar Association conference, a "Pro-Tem Steering Committee" was established to organize a conference dealing exclusively with poverty law. Sponsored by the Poverty Law Section of the Canadian Association of Law Teachers in cooperation with the federal Department of Justice, the Canadian National Conference on Law and Poverty was held in October 1971.[51] Its purpose was "to probe the impact of law on poverty both in terms of the sense in which law is a contributing variable to poverty, as well as the extent to which law and lawyers can be a creative force in the war on poverty."[52] The event was attended by some 160 participants, chiefly law professors and law students involved in poverty law activities, but also representatives from federal and provincial governments, law societies, and representatives of the 'client community,' the media, and social action groups.

The conference represented a high point in the Canadian struggle to identify and address the problems related to making legal services work for the poor. Participants considered data about the extent and nature of poverty in Canada, questioned the myths of equality of opportunity and the virtues of a capitalistic society, and denounced the structuring of inequality in the country. They examined the differential character of the law as regards the rich and poor and the implications of that for practice. They analyzed alternative models for the delivery of legal services; the relationship between the courts and the poor; and strategies for legal reform."[53] Issues discussed included the class nature of law, victimization of the poor by the law, balancing the demands of case loads with law reform and group advocacy, ethical problems in practising law for poor people, community participation in the practice of poverty law, the lifestyle of the poverty lawyer, the problems of student legal aid programs in practising poverty law, the relationship of community control to professional responsibility, and the role of paraprofessionals in community legal services.

Preventive law was a recurring topic at the conference. In identifying it as one of four basic strategies available in meeting the needs of the poor, David Lowry, Director of the Dalhousie Neighbourhood Law Clinic, expressed the frustration of many:

> The major problem is, of course, that so many people are completely unaware of their rights and the lawyer should do what he can, at least to inform people of their rights in society. I don't know exactly how this should be done. I don't have a blueprint for this but the usual modes of pamphleteering and television and this sort of thing, seem to work only with limited success. I really don't know how that area will develop but it must be tried.[54]

Lowry's uncertainty was countered by Stephen Wexler, a member of the Faculty of Law at the University of British Columbia and a former staff lawyer for the National Welfare Rights Organization in the United States. He had recently published an article in which he made a hard-hitting attack on the new approach to legal services for the poor.[55]

Wexler's article had the particular cachet of being written by someone who had been on the firing lines and was back to report on the gruesome details of the battle. It refreshed the antipoverty rhetoric with statements like: "Poor people are not just rich people without money;" they did not have "personal legal problems in the law school way;" and they were "constantly involved with the law in its most intrusive forms."[56] Wexler criticized the new law school courses on 'Law and the Poor' as perpetuating the traditional ways of analyzing legal problems. They failed to teach students to ask how the law came to take its current form, why a client came to be involved with the law, or what happened to him after his case was dealt with. The article was a denunciation of traditional ways of practising law and a passionate endorsement of community organizing – "the most exciting, most interesting, most enlivening work to be doing," – a job he claimed that most lawyers coveted.[57] These comments resonated with the bravado of law students during that period and Wexler's article became something of a Canadian manifesto for the new concept of legal services for the poor. Wexler's more troublesome comments on the limitations of the case approach and the games lawyers play seemed to get less attention. Perhaps the cruel realities of community organizing that he related in the middle of his article caused readers to shrink away from this aspect of his message. Perhaps his own cautions regarding organizing in Canada enabled legal activists to downplay the importance of his damning insights into the new form of practising law for poor people.

Wexler was a fan of public legal education. New to British Columbia, he had already been involved in a welfare rights project in Vancouver. He and a team of lawyers and law students had put the Cloward community legal education strategy to work by identifying several 'special needs' benefits that welfare recipients had not been getting. Going door to door in low-income housing projects, members of the team informed potential claimants of these rights, and urged them to complete the appropriate forms and make a claim. 60 people subsequently made applications for special needs benefits, all of which were successfully processed by the local Welfare

Office in three days. To Wexler, this demonstrated the utmost importance of legal education for the poor.[58]

At the 1971 conference, the need for legal education was not only supported by the representatives of the poor,[59] but was the major theme of the panel they put together after hi-jacking the conference agenda for the purpose of telling participants what the poor really wanted from legal services.[60] They called for information better preparing them to appear in court or at hearings; for practical legal information on legal documents and processes; for information on their rights as welfare recipients, on the Canada Assistance Plan, and provincial welfare legislation; information on the implications of changes to the tax laws; the reasons for the practices of wholesalers; and for training in lobbying for change.[61] Panellists were insistent that there were many things that the poor could do on their own, either individually or collectively, and lawyers were not to appropriate these as falling within their exclusive domain.

Few, if any, issues were resolved at the conference, with each legal service agency being left to make its own accommodations between principle and pragmatics. It was the hope of organizers, that participants might see "poverty law as a 'movement' to protect, enlarge, and create rights for the poor,"[62] but no subsequent conference with this diversity of representation was ever convened and no process was put in place to build the movement.

Preventive law was a standard component of the student legal clinics set up in the late 1960s and early 1970s in Canada. Their goals reflected the radical ambitions of the legal services movement and their efforts foundered on the same shortcomings of the neighborhood legal services as did their American precursors. Being student-based programs, though, they suffered a few additional shortcomings. Reviewing the service set up by law students at the University of Alberta has particular appeal in illuminating both the strengths and weaknesses of those services and in tracing the development of PLE in Canada. Student Legal Services (SLS) was one of the earliest student legal aid programs in the country,[63] having started before the pilot clinics funded by the National Department of National Health and Welfare. It had the advantage of having operated for several years outside the influence of the federal government so it provides some sense of what a more organic approach to developing legal services for the poor in this country might have looked like had it been encouraged and supported. SLS has the unique distinction of being the only Canadian clinic from which a major public legal education service was launched.[64] Perhaps this was because SLS began outside the mainstream of law student clinics and was not subject to the same scrutiny as the pilot projects, nor 'licensed' by the provincial law society as some other clinics were.[65] In its first years, SLS was not accountable for meeting specific nor quantifiable objectives, influenced, if not set by, funders or the legal profession. Because SLS was more autonomous than most other student programs, students could follow their own interests, including their radical commitments to social change, unencumbered by the oversight of the legal establishment.

In time, student interests would change and the establishment would have its way, eventually reducing SLS to a city-wide clinic for handling cases without any community affilitation. PLE publications would be reduced to standardized styles and formats, bearing little resemblance to their more diverse, if sometimes less polished, forerunners. Instead of providing access to justice, SLS settled for providing access to the law, mistaking the latter for the former. Understanding the SLS experience not only helps to locate PLE in its social justice context and describe some of the earliest PLE carried out as part of the legal services movement in Canada, [66] but suggests some of the factors that caused PLE to outgrow its role as an adjunct to other legal services and become an aspect of the legal system in its own right.

To provide some contrast with the particular approach taken by SLS and enable a fuller account of the scope of public legal education in the legal services setting, the experiences of a second organization which adopted a different structure will also be reviewed. An anomaly of the Canadian legal clinic scene, People and Law Research Foundation Inc. was Canada's lone experiment with a *pro bono* legal service offered by a private law firm. Although People and Law did not survive as an organization, its public legal education activities were among the most advanced in the country at the time of its demise. They were among the first examples of a strategy that would become a staple in some of the public legal education agencies that began to appear in the mid-1970s.

Although these two organizations failed to live up to their ambitions, they provide strong examples of the best of what was achieved in the first iteration of public legal education. Their weaknesses are equally instructive and, while perhaps extreme, are by no means unique. Other student clinics may have found more successful points of equilibrium in balancing various demands on their limited resources, but none has overcome the contradictions inherent in using law as presently conceived to effect radical social change.

STUDENT LEGAL SERVICES OF EDMONTON[67]

The idea of forming student clinics was in the air in the late 1960s when Student Legal Services was being conceived. The specific impetus for the service came from the Edmonton Social Planning Council by way of a law student, Donna Koziak. Koziak had been a member of the Alberta Service Corps, the province's blander version of the national Company of Young Canadians, and was a member of a loose collection of social activists that hung out at the Council's offices. Council staff were influenced by the writings of Robert Theobald,[68] Michel Blondin,[69] Ivan Illich,[70] and

Paulo Friere,[71] among others, with their analyses that institutions created dependencies and delegitimized independent learning, thinking, and action; their visions for alternative futures in which people define their own social reality; and their strategies for bringing about that empowerment. The Council's operations were much like those of American community action agencies, employing a community development approach to working at the grass roots level with disadvantaged communities in the city. The Council helped establish an emergency shelter for women, a self-help society for seniors, another for welfare recipients, and a third for disabled people. Staff worked with transient youth and street kids, set up pre-school programs, wrote briefs on issues like the conditions at the Single Men's Hostel, and supported a self-help organization of convicts and ex-convicts. This was the time of the Hellyer Task Force and the Planning Council became involved in housing as a political issue.

As much as possible, Planning Council staff pursued egalitarian practices, including recognizing that "the voice of the poor, the people with the problems, was equal in value (perhaps greater than equal) to the voices of the professionals, the agencies, the academics;" and that "all workers were equal."[72] In Council projects, everyone's contribution was legitimate and contributed to a synergy that produced an understanding of problems that was seen to transcend any individual's personal insights. While not a formal policy, the Council minimized and downplayed distinctions between workers, volunteers, board members, community members, and members of other organizations involved in Council projects.[73] The effect of that practice was to make working with the Council attractive for an extensive range of talent, particularly left-leaning academics, community activists, indigenous leaders, and radical students, including, as it turned out, law students from the University of Alberta.

One of the Council's staff, Lynn Hannley, served as a 'detached worker,' focusing on problems of poverty in the inner-city community of Boyle Street. Hannley was an experienced activist whose prior activities had included working with inner city residents and agencies to organize a summer pre-school program, a 'drop-in centre' for teens, and the Native Brotherhood which ran a community drop-in and information service. She had formerly been involved in disseminating birth control information at the University of Alberta, an illegal activity at the time. Boyle Street, the community in which Hannley focused her work, contained Edmonton's "strip," - the street that was worked by the lowest rung of the city's prostitutes and that was home to the city's derelicts. The Boyle Street community also contained the city's Single Men's Hostel, the Salvation Army hostel, a soup kitchen, a number of bars, rooming houses, and the abandoned and decrepit housing that sheltered welfare families, new immigrants, off-reserve Indians, ex-inmates from mental hospitals, correctional institutions, and federal gaols, and an assortment of transients. In the summer, the neighbourhood playground was strewn with sleeping alcoholics and drug addicts and with the paraphernalia of their habits. The area was the closest thing Edmonton had to a ghetto.

Hannley's tasks at the Council included supporting the Native Brotherhood and working with it and other agencies to organize the Boyle Street Coop, a community services cooperative. Like Shriver's 'supermarkets of social services,' the Coop was to bring together under one roof, a collection of services needed by the community. But the Coop dream was not to be just a convenient way of organizing or even coordinating services; the Coop was to be owned by the community. Organizing the Coop meant organizing services to meet as many of the needs of the community as possible. At that time, legal aid in Alberta was evolving from a 'needy litigant' to a judicare program.[74] Neither was adequate for the needs of people living in Boyle Street so Planning Council activists began considering the possibilities of a neighbourhood law student clinic as a way of improving services to the community.

In addition to working with the inner-city poor, the Planning Council was working with issues related to youth. The Council had a long-standing involvement in the problems of day care services and child welfare matters. During the sixties, it expanded its mandate to include juvenile delinquency and the need for services for youth. This led to the Council's becoming involved in supporting services for transient youth - hitchhikers, draft dodgers, and hippies. In response to the needs of those youth, the Council published a handbook of legal rights directed primarily to transient youth. Untitled, it came to be known as the *Blue Book*,[75] by virtue of the colour of its cover. An adaptation of a booklet produced by the Yorkville Diggers in Toronto, its contents tell the story of the problems youth were experiencing at the time. The first item in the booklet, and the legal problem likely to be encountered first by its intended reader, was "Vagrancy." Not repealed until the early seventies, this law prohibited anyone from wandering abroad with no apparent means of support, unable to justify his presence in the place he was found if asked to do so by a police officer.[76] Under the vagrancy provisions, police had the broad power to stop and question anyone. The rule of thumb was that a person had to have at least five dollars in his possession and to be able to provide the address of a local residence to avoid arrest. Panhandling was an open and shut case of vagrancy. Transient youth were very vulnerable to this charge.

The second topic covered by the booklet was "Law respecting Juveniles." It covered two serious items: "harbouring a juvenile" and having intercourse with a juvenile. Harbouring was a broadly inclusive term that meant that just knowing the whereabouts of a runaway juvenile was an offence. Teen drop-in centres were immediately vulnerable to this law. Transient youth who teamed up together sometimes found themselves afoul of the law regarding intimate relations. Having intercourse with a girl under sixteen was an offence whether she consented or not, and having intercourse with a juvenile exposed the boy to the offence of contributing to her delinquency. Since, in Alberta at that time, girls were considered juveniles until they reached 18, this law intruded into the lives of many of the youth who were on the move. The seriousness of this offence was brought home with the reminder that if the girl were under age, the sentence could be as high as life imprisonment with whipping. The rest of the booklet warned its readers of the laws regarding possessing, trafficking, or using drugs; possessing liquor; using birth control devices or getting an abortion (at the same time, reminding the reader that help was as near as their phone); a variety of sexual offences; communicable diseases; obstructing justice; and landlords and tenants. The booklet concluded with practical advice on what to expect and do if these warnings came too late or were not heeded.

Although well vetted before publication, the *Blue Book* provoked considerable controversy and criticism when it was released.

> The very fact that people were being told their rights was considered by some to be subversive. In addition, the language of the teens and the occasional editorializing on the law was found offensive.[77]

The booklet suggested, for example, that the law concerning marijuana should be changed though it cautioned that "[c]landestine use of marijuana is not civil disobedience, it's just a crime...."[78]

This was the social context in which SLS was born. The Edmonton Social Planning Council was its early mentor and the Native Brotherhood drop-in and the Boyle Street Coop its physical and spiritual home for several years. The *Blue Book* stood as an early challenge to students, demonstrating what public legal education could be and do. The links between all these activities and the law school at the University of Alberta would begin through Hannley and Koziak, personal friends who had worked together on projects in the inner city.

When Koziak started law school at the University of Alberta, she shared information about the Council's work with her colleagues. A small group of interested students took up the idea of establishing a student legal clinic and presented it to the Law Faculty Council for support.[79] The objectives of the project were

- to increase awareness of Boyle Street residents of their situation as citizens, particularly regarding the law;
- to help provide actual legal aid and advice where necessary and possible;
- to facilitate the residents of Boyle Street actually making contact with existing sources of legal and other help.[80]

In seeking faculty approval for the service, students also argued in their self-interest that the program could "help bring about curriculum revision or additions in the U of A school" and could "encourage student interest in professionally undermanned areas."[81] Faculty Council endorsed the project and assigned two summer 'student assistantships' to enable the service to be piloted.[82] Koziak was one of the students hired for the project.

The initial structure of Student Legal Services was informal and egalitarian, at least among students. Its decision-making body was a 'steering committee' composed of any students who wished to participate in policy discussions, though a chairman was selected out of the group. Decisions regarding operations were made, as much as possible, by consensus. During the summer, the two students hired by the University of Alberta were assisted by student volunteers and supervised by a faculty member. During the school term, the staff of SLS consisted of teams of student volunteers advised by a practising lawyer.[83] The students employed by SLS each summer formed the inner core of the organization and were responsible for sustaining the agency's understanding of and relationship with the community. Each summer, the new team of student workers immersed themselves in the community, attempting to learn as much about its dynamics and needs as possible. The primary site for the fledgling service was the Native Brotherhood drop-in centre,[84] a location that was thought to be both physically and psychologically accessible to members of the community.[85] A second site, which proved less viable, was established at the Edmonton Day Centre where medical services were being provided by students of the Faculty of Medicine at the University of Alberta. Students also attended city police cells every morning to provide an early form of duty counsel and made visits to the local provincial correctional facility to assist inmates with their legal problems. The law faculty provided the minimal office supplies needed by the service and the students' Law Club covered incidental expenses.

The general mandate of SLS was to put "the knowledge and resources of law students at the disposal of underprivileged persons in one area of the city of Edmonton."[86] It was a modest proposition and students were generally open to whatever would be asked of them. They began cautiously, unsure whether there would be legal needs in Boyle Street that students could help to meet. The students had two other concerns. First, they did not want to generate a dependency on their services. Theirs was only a pilot project that might not be continued. More ideologically, they believed that "the client should be encouraged to develop confidence in his own ability to carry out legal procedures."[87] To provide moral support to their clients, though, students would often attend court. Part of the summer ritual for students became introducing themselves to the senior judge of Provincial Court so that their presence in the courtroom would not attract unfavourable attention.

The second reason for caution was that SLS had not sought and, therefore, did not have the sanction of the Law Society of Alberta for their clinic.[88] Fearing delay, if not interference or outright disapproval, students hoped to prove the value of their service before it was challenged by the establishment. Students wished away concerns that they might be in violation of the *Legal Profession Act*[89], hoping that the fact that their services were provided for free would leave them beyond the ambit of the law. Students were careful not to take on more than they felt they could handle. The initial decision to proceed with caution seems to have paid off. For years, SLS did not experience any interference from the Law Society and enjoyed greater autonomy than most other student clinics in the country. The slowness of students to take on court work also proved beneficial, for a time insulating the organization from the problems of heavy case loads that invariably kept other community legal services projects from undertaking as much community work as they might have liked.

The main activity of the first summer was providing assistance to individuals encountering problems with the law. Much of the time, all clients needed was to have their problems better defined and the solutions became self-evident. Of the 100 cases dealt with more substantively, one-third were criminal matters, one-fifth were family problems and another one-fifth were welfare disputes. 17% were landlord and tenant, and another 8% divided equally between employment and landlord and tenant. The remainder were in such areas as insurance and tort. Where legal aid was available (it covered only criminal matters), referrals were made. Where legal aid was not available, more direct assistance was provided by students or by the lawyers who volunteered to back them up. Students also provided referrals to social services or community agencies in an effort to treat the client's legal problem in its broader context. To assist them in this work, students met with as many agencies serving the community as possible, gathering information about those services and signalling their willingness to co-operate in dealing with clients and community issues. When the opportunity arose, students often accompanied clients to their appointments to see how other services actually worked in practice.

With respect to clients who were remanded in city cells or in custody at the provincial correctional institutions, SLS played a particularly key role. At that time, the law with respect to granting bail had not been reformed and it was not unusual for people to be held in custody pending their first appearance in court even on minor matters. This was particularly the case with respect to vagrancy charges since the accused, having no stable residency, might well disappear if released. While in custody, inmates were accorded few privileges in communicating with the outside world, and often were only given their 'one call to a lawyer' if they requested it. People often appeared in court without having made such a request. Students served as an early form of duty counsel, getting what assistance they could from legal aid, volunteer lawyers, social services, or the client's family.[90] If assistance could not be lined up in time for a court appearance, inmates were coached as to what would happen in court, their options, and how to handle themselves effectively.

In addition to handling cases, students made themselves available to support the activities of other agencies in the community. As SLS became known, students received requests to provide advice at drop-in centres for transient youth, to give presentations to community groups, and to prepare a legal information column for a native publication.

Even with the small number of cases dealt with over the summer, students began to get a sense of the ways in which the law was working against the poor and to document instances where legislative reform was indicated.[91] Students also discovered how little people knew about the law and became convinced that a broader program of legal education was needed. Working with the Edmonton Social Planning Council and other agencies operating in Boyle Street helped students see beyond the legal problems of individuals and gave them the opportunity to participate in addressing the underlying social problems of the community. Community involvement earned students 'chips' in the informal but essential economy of agency favour-swapping. Their good turn was returned in kind when they had a client with an urgent or special need. By the end of the summer, students were satisfied that there was a need for legal services that they could meet, not only in the Boyle Street community, but elsewhere in the city as well. The pilot was deemed a success and the faculty agreed to fund student assistantships again the next summer.

SLS operated on this loose sort of arrangement until the fall of 1970, when the faculty advisor resigned and another could not be found. The new dean of the law school called for the program to be suspended until proper supervision of it could be arranged. Fearing the suspension was a ruse to eliminate the program altogether and believing the program to be theirs, not the faculty's, student leaders would not agree to cease operations. If the faculty was unwilling or unable to provide the necessary supervision, lawyers in private practice could do so. A well-timed article in the *Edmonton Journal*[92] brought the matter to a head and, in defiance of the dean, students found the supervision they needed in the legal community. While these heroics enabled the service to continue over the winter, the students found themselves in command of an organization that had 'no apparent means of support.' Fortunately, this unhappy event coincided with the emergence of the federal government's Opportunities for Youth program and funding was obtained in time to not only keep the summer program going but to increase the number of summer staff.[93]

Growth of the organization continued with students beginning to appear on behalf of their clients in the lower courts. The first time an SLS worker attended provincial court to conduct a trial, his standing to appear was challenged. Prepared and confident in his argument, the student succeeded in qualifying himself, nonetheless worried that the Law Society might see matters differently. As time passed and no word was heard from that quarter, the issue of appearing in court seemed settled though it would reappear from time to time in family court[94] and in criminal court in Calgary.[95] The Law Society would also periodically express concern regarding the activities of students and the adequacy of their supervision. However, increasingly SLS became accepted as part of the legal services continuum in Alberta.

With the decision to start undertaking trials, students headed down the same path that caused so many other legal services to lose the capacity to undertake more community development or social action activities. That subtle shift in emphasis quickly increased demand on SLS to provide assistance with criminal trials, a demand which was matched only too eagerly by a growing number of students interested in getting practical experience in handling legal matters. SLS experience was proving to be a positive entry on a student's articling resume. Public pressure for more service and student pressure to provide that service combined to create a force that SLS would not be able to resist. New clinics were opened in more inner city neighbourhoods, on the university campus, and eventually, downtown as students fanned out across the city in search of clients. Every year the need for each clinic was informally reassessed, with some being shut down and new ones opened in accordance with students' interests and understandings of the changing needs of various Edmonton communities. A special family law telephone-based information and advice service was started and later a do-it-yourself divorce clinic was instituted. The impact on other activities of the shift in emphasis toward case work was not immediate. It would be several years before it became apparent that 'boy barrister' had wrested control of the organization away from 'student radical.'

For the next few years, developments in other aspects of SLS were remarkable. By virtue of its location within the Native Brotherhood's community information centre, summer students, in particular, continued to be exposed to people, ideas, and innovative projects addressing the needs of the poor. Students continued their association with Hannley and developed relationships with other activists, such as Chester Cunningham, the outreach worker for the Native Friendship Centre which was starting an innovative native court worker service.[96] Students spent time on street work, going to meetings, visiting residents, and helping to solve the myriad of problems that would be brought to the drop-in. In 1972, when National Health and Welfare provided the necessary funding, SLS became one of the founding agencies of the Boyle Street Coop and took up office in the old rooming house that became the Coop's first home. Once there, SLS immediately expanded its network of social service contacts and became associated with a host of agencies taking non-traditional approaches to serving the inner city.

Through these contacts, SLS workers came to know a great deal about Boyle Street and the problems that characterized the area - problems of housing, urban renewal, transiency, alcoholism, poor health, and service delivery. Students helped document violations of health by-laws in slum housing; provided alternatives to the commercial income tax discounters who preyed on the poor; lobbied for changes to the municipal by-law regulating discounters; helped organize street festivals; and worked with communities preparing briefs to the city seeking more parks in the inner city, appealing housing development permits, or making complaints to the police commission. SLS worked with Humans on Welfare regarding welfare appeals, the Coop regarding condemned housing in the neighbourhood, an inner city food cooperative regarding consumer issues, and the Neegan Society (which worked with inmates from the provincial correctional institution) and Native Outreach, (an alternative to exploitive employment agencies), regarding organizational matters. SLS also became involved in supporting the founder of the city's first methadone treatment program for heroin addicts who, one day, found himself arrested for criminal negligence causing death.[97]

As SLS's reputation grew, requests were received to help with problems from as far away as Faust, Alberta, a remote native community in Northern Alberta where the Metis lived in some of the worst conditions in Canada.[98] This was the same community that the CYC had tried to organize in 1966, describing the racial discrimination there as cruel and degrading, befitting the stereotype of Mississippi more than Canada. "If the revolution were going to come, it might come in Faust."[99] SLS received calls to unionize trappers and fishermen. (Though these efforts were unsuccessful in the case of fishermen, the price they got for their fish went up.) SLS prepared a report for the Metis Association of Alberta on hospital care in the Northern Alberta, particularly the remote community of Vermilion, which in turn, led to a formal inquiry into the problem; and counselled Indian Rights for Indian Women as they began their slow struggle to regain treaty status for themselves and their children, having lost it when they married non-natives. While individual students were sometimes accorded particular credit for these activities, for the most part, John Faulkner, chair of SLS in 1972, was not too far off the mark when he summed up the SLS position at the National Conference on Law and Poverty in 1971:

> If we are to assist the powerless, we must give them power, and not lay our power trip on them. We must be the water carriers of the revolution and not the foremen.[100]

For a time, SLS was where the social action was in the northern half of the province. At their best, students walked with leaders of the community, taking direction, not giving it.

SLS quickly learned to use the media well. The article in the *Edmonton Journal* in 1970 sounding the alarm that SLS might close was not an accident, but had been deliberately, though surreptitiously, released to bring external pressure to bear on the law school. Both the paper and CBC TV carried stories promoting the service from time to time. These were something of a mixed blessing, drawing out the hostility that some lawyers felt toward the service. After one such television story, the director of

SLS was called on in a class taught by a 'cross-town lawyer' who was hoping to catch her unprepared – it was a class in which she was not even enrolled. A story on her and another SLS student appeared in the city paper just before she began being interviewed by law firms in her search for an articling position, making it difficult for her to get a clerkship in the city.[101] But cultivating the media, paid off time and again when students wanted public exposure for issues like the problems in Faust,[102] the hospital care of natives in northern Alberta, or simply a non-legal solution to a problem experienced by a client.

Nor was community legal education neglected. From the start, SLS placed considerable emphasis on education. The first activity of summer students for several years was to visit key agencies in the community to let them know the service was again available during regular office hours (as opposed to the evening clinics operated during the year) and that students were still interested in the broader issues of the community. Students distributed simple posters throughout the neighbourhood and in the city police cells announcing the address and phone number of their service. Standard practice in handling any file was educating the client on his situation, the applicable law, and the options available to him. Until students began taking cases to court themselves, they coached clients to make effective representations on their own behalf. During the second summer of operation, a particularly contentious trial arose in which local Maoists complained that they were political prisoners and disrupted their trials, defaming the judge in the process. Refusing to be represented by lawyers, they did permit an SLS worker to provide them with basic information on their charges so they could defend themselves.

More general legal education was also considered important:

> Education of the citizen about his legal rights and responsibilities and the legal system is a fundamental objective of the Student Legal Services Project. Legal education must be extended to the public, not on a level that approximates the training of a lawyer and not for the purposes of substitution of the private practitioner, but in order to raise people to a level of awareness from which they will recognize the full significance of their rights and responsibilities in a society organized under the Rule of Law. This type of educational elevation will not come merely through students becoming involved with individual problems, but only through a large-scale campaign which will introduce the citizen to various areas of the law.[103]

This broader education took both informal and formal forms. The SLS office in the Native Brotherhood's information centre consisted of a single room in the corner of an otherwise open space. When students were not actually involved with a client, they would mingle in the outer drop-in area developing relationships with the staff, other activists that stopped by, and with members of the community itself. The presence of a law student almost guaranteed that questions about the law would soon be raised and heated discussion might follow.

The development of SLS's public legal education was as organic as its social action work; they were often interconnected. Work in drop-in centres for transient youth led to speaking to high school law classes and at summer camps. In working with juvenile probationers in one community, SLS developed a mock trial program which it later incorporated into its expanding program for schools. SLS workers were sometimes aided in their work with youth or in the schools by the draft dodgers and ex-convicts that they met through their other work. Those associations in turn led to the development of educational services for inmates of local correctional facilities. The success of the Social Planning Council's *Blue Book* led to student involvement in another local publication, *Many Laws,*[104] a guide to the criminal law for natives written by a prominent Edmonton Metis woman and illustrated by a former Company of Young Canadians staff member. Later students worked with a local self-help group, Humans on Welfare, to prepare, *Rules of the Game*, a guide to the welfare system. Other guides and pamphlets followed, including the massive *Layman's Lawbook*. SLS also took advantage of media opportunities, maintaining a regular five minute weekly radio spot at one point.[105] Portable videorecorders came on the market in the mid-seventies and students shot their own videos on topics such as Small Claims Court. In general, students did what the situation called for, helping with conferences, publishing materials, and advising emerging community-based organizations on topics of concern to them. A conference on landlord and tenant law might be a step in the process of generating pressure for law reform. A booklet on welfare rights might be the proving ground for introducing a new welfare appeals service. Needs were defined by the community and students added their knowledge and growing capacity to the resources being rallied to meet those needs. Appropriate to the times, the administrative unit that became responsible for coordinating some of these projects was dubbed Agit-Prop.

The learning curve in SLS was steep as students discovered that practising poverty law in Canada had considerable limitations. The Canadian poor had different characteristics than the American poor – for one thing, they did not come so conveniently concentrated in urban ghettos. For another, Canada was a considerably nicer place to live than the United States. It was less polarized and less extreme politically. The causes of an individual's poverty were less obvious than in the United States where certain visible physical characteristics guaranteed one's poverty. Except in the cases of native poverty and regional economic collapse, in Canada, the poor were often isolated from each other and each case seemed specific to its own circumstances, making community organizing difficult. The Canadian situation called for a different analysis of poverty and different strategies for dealing with it than the American situation, but none existed. Nor did the Canadian legal system provide the same resources for attacking poverty as did the American – Canadians did not enjoy constitutionally guaranteed rights like Americans did and courts were conservative in limiting the actions of the state. Nor was Canadian legislation or case law particularly sympathetic to the poor, leaving students with little law to draw on to advance their clients' interests. Even if there had been law on their side, students lacked the standing in the higher civil and criminal courts necessary to undertake any real 'test cases' themselves. In the rare instance where they had the basis for challenging or advancing the law, students soon exhausted their limited right to appear in lower courts and would have to pass the case on to a volunteer lawyer. In the absence of a proper legal aid system, there was inadequate support for a deliberate program of test cases. Since the law was not on the side of the poor, SLS could hardly spread the gospel of legal rights to the poor, transient youth or any other constituency with which they worked. In fact, the use of rights language was highly problematic, the more so because American television programming made Canadians more aware of the American legal system than their own. Public legal education had to not only inform Canadians of their laws but counter the misinformation that abounded. Still, it was commonplace to talk in terms of 'rights.' Because Canadians wanted to know their rights, that often became a jumping off point for elaborating the Canadian legal system, but it was also a constant reminder of the magnitude of the job to be done. But the most significant limitations on SLS were the realities of student life – class schedules, deadlines for papers, examination imperatives, and, most important, student interests, all limited the amount and type of commitment that a student could make.

Case work had the greatest appeal for students. It provided direct and relevant experience preparing them for their careers. Nor were all their cases were routine.

Some did provide the opportunity to push the limits of the law[106] or to harass or embarrass people who exploited the poor.[107] But these were exceptions. Reforming the law through test cases meant breaking new legal ground - proposing new legal arguments, devising a program of test cases, or taking the rule of law into new forums. It would be an unusual student who would have a sufficient command of his new knowledge and the kinds of skills and professional judgment that this work needed. In the United States, neighbourhood legal services and special interest advocacy organizations were staffed with lawyers who could hope to acquire those competencies over an extended period of time. It was unrealistic to think that law students could accomplish anything akin to that. Case work in student clinics across Canada tended to address the more mundane day to day problems of the poor. What test cases there were tended to be very modest.[108]

Students experienced similar problems in engaging in community organizing. As Alinsky noted, it is a rare person who has the particular combination of personal characteristics that suit that kind of work. It then takes time to master the competencies needed by an organizer and time for the organizing activity to bear fruit. However, particularly when working as part of a larger team, students would, from time to time, experience success in helping a community overcome a problem.

Preventive law had more appeal for students as an alternative to case work than did community organizing. Researching the law and writing summaries were skills students were honing and could easily apply to the areas of law of interest to the poor. As was the American experience, it was not long before students discovered that the need to know about the law went well beyond the poor, and SLS responded by sending students out into the schools to enrich high school law classes and by publishing public legal information materials. This kind of work was even easier for students to balance with their other obligations. Working on pamphlets or speaking to classes of school children could be fitted into a student's schedule more readily than participation in community development or social action activities that demanded on-going and intensive commitments of time and energy.

The period from 1972 to about 1975 represented the golden years of community involvement and social action for SLS. Student leaders had a clear sense of their mission and role and were prepared to work in collaboration with other professional reformers and the indigenous leaders of a broad range of communities. Financially the organization's situation was strong, with funding coming from the Department of National Health and Welfare, the Secretary of State, and the Department of Justice Canada. After 1974, the chief source of funding for SLS became the Alberta Law Foundation whose generous funding enabled 35 students to be hired that summer.[109] Orienting such a volume of students required a change from the casual methods of the past, so SLS conducted formal seminars for new recruits each summer and fall. National Film Board films on community development projects and on the Point St Charles legal clinic were used to inspire students; the chairs of each project described the work of their units; key aspects of law were highlighted; and organizational processes and procedures were reviewed.

To better maintain the quality of the work done by the growing number of students, SLS hired lawyers, first on an honorarium, then on a full and part-time time basis, to advise on service activities. In keeping with what was increasingly becoming the dual commitment of the organization, one lawyer was assigned to work with students handling cases and the other to advise SLS in the organization and development of its community programs. The growing shift in emphasis between the two functions was evident in the allocation of the positions: the full-time lawyer was assigned to supervising case work and the part-time position to community outreach. Growth in service meant growth in administration. SLS was incorporated as a society in 1971 and its governing structure became more formal. Still referred to as a steering committee, its board of directors was composed of a chairman elected by the students at large plus a student elected to lead each of the neighbourhood clinics or other service divisions. No longer able to operate out of the small carrels provided to students in the law library, the organization needed better office quarters. Having by now acquired a taste for defying authority, SLS claimed squatters' rights on the offices built for non-existent graduate students when the newly constructed Law Centre opened in the fall of 1971.

The times were changing and so were law students. A crisis was building in SLS with respect to its priorities. Signs of trouble began appearing in 1971 when the agency considered whether to take on a specific project dealing with welfare issues. Social action carried the day but it was troublesome that the issue had even caused a debate. Over the next few years, a schism began to appear, sometimes as a division between the 'band aid approach' to service and a longer term law reform or social action approach, other times as a breach between community service and clinical training for students. By 1973, those who supported community action and preventive law activities were increasingly on the defensive, calling on the organization from time to time to reconfirm its commitment to those types of activities. Where once those functions had been taken for granted and court appearances suspect, the tables had quickly turned; case work had become the norm and other functions required explicit legitimization.

In 1974, then chairman John James prepared a paper outlining the issues involved in the contest between case work and community action hoping to lay the matter to rest once and for all. He accused the organization of having lost its commitment to its original vision and decried the crippling effect of the huge case loads that now preempted discussions on the allocation of the organization's resources. James argued that students that joined SLS just to do cases were disrupting the organization and detracting it from its main business. He went so far as to suggest sharing responsibility with the faculty in running the Campus office as a clinical legal education program. James' call to reaffirm SLS's social action goals carried the day with the steering committee, but no plan was put in place to limit case work. Unabated, case work came increasingly to dominate SLS's view of itself and the city's expectations of it.

The James report marked the point of no return for SLS. For several years the organization continued to carry out significant community[110] and public legal education activities, but the reformist flame was dying. A few sparks would flare up from the embers from time to time, as when SLS set up a project to tell women how to protect themselves in case of a divorce; published a pamphlet promoting changes to the rape laws; or produced a booklet on landlord and tenant law that was seen as so heavily weighted in favour of the tenant's perspective that the Calgary Landlord and Tenant Advisory Board refused to distribute it.[111] For the most part, former SLS chairman Jim Robb was right when he rebuked a national conference of law student programs convened by SLS in 1975, "You have an opportunity to challenge a bad system, a repressive system, and all over the country all I see is complacency."[112] Students were succumbing to what John McLaren, Dean of the Faculty of Law at the

University of Calgary described as "a distinct narrowing of vision" as a result of their law school education. Law school was responsible for

> a metamorphosis of a human caterpillar investigating the leaf of life, full of intellectual curiosity and social concern to the short-sighted and dull legal moth who is only happy flitting through the dark recesses of the law and only capable of devouring legal problems.[113]

But McLaren took the sting out of his bite in reassuring students that even dull moths were having an impact in shaming the profession into grudging admiration for their dedication and competence.[114]

Fiery speeches rallying legal activists to the cause of the poor were rapidly becoming anachronistic, as was social action and the idea of serving a community like Boyle Street. SLS's connection with Boyle Street and the Coop deteriorated and, by 1987, statistics indicated that the office was no longer serving inner city residents. Instead, it was attracting impaired driving cases from the central and north-east parts of the city. Those cases could be better and more cheaply served elsewhere, so the Coop office was closed. Public legal education fared little better. Though it continued to be supported by the agency, activities lost their community connections and became more standardized and generic - pamphlets and booklets for the public, lectures and mock trials for the schools. Agit-Prop was given a more sensible name and its activities continued to slip in the agency's priorities. Both case work and public legal education settled at the level that met the lowest common denominator of student interest. By the late seventies, most students just wanted to get what they could out of their SLS experience.[115] The few students that still wanted to make a difference in the world found other causes and other student organizations through which to address them. SLS no longer offered the kind of milieu in which innovative social change was encouraged or sustained.

Issues of control were not limited to the struggles of internal factions. Challenges to the students continued to come from the Faculty. By 1972, the Dean made a second move to take over SLS, though this time it did not appear to be for the purpose of shutting it down but rather to bring it under Faculty control. Fearing that the takeover would constrain the students' social action work, SLS appealed to the President of the University. Not only did the students succeed again in out-manoeuvring the Dean, but they gained funding for a half a secretarial position at the University's expense. The issue of the relationship between SLS and the Faculty would not go away. From the first proposal launching the pilot service, there had been an undercurrent of interest on the part of the students in having a more structured and credited clinical legal education program. Faculty involvement reared its head in the James report debate; in a report on the future of legal aid in the province;[116] and in faculty discussions several times over the next few years,[117] though no program has yet been put in place.

One issue that never became contentious for SLS was that of community control. SLS was never approached by any of its communities for representation on its decision-making board though SLS members often served on the boards of other agencies. Nor did the students ever seriously entertain it; community control was considered impractical. With hindsight, it is tempting to suggest that the demise of SLS's community involvement might have been averted if the organization had been accountable to the community in some way. At best the school might have had two programs – the option James presented - one for those who just wanted experience and one for those who wanted to explore the uses of law in fighting poverty. But even that scenario seems unrealistic. The external world was changing too. This was the mid-1970s, the taste for confrontation had been soured by violence. Activists were moving on to careers with some longevity, at best, making commitments to specific issues, whether native rights, housing, employment, or one of the myriad other issues on the public agenda. Issues were no longer defined in economic terms and the problems of the poor began to be submerged as only one of many aspects of an issue.

With changes in funding came changes in the expectations of funders. As SLS became increasingly well-funded by the Alberta Law Foundation, keeping on the right side of that funder and meeting its various requirements for accountability exacerbated the organization's own conservative trends.[118] Other, more community-based organizations experienced similar difficulties in dealing with foundation requirements. In SLS's case, the foundation insisted first on an external advisory committee to SLS and, later, on the merging of that committee with the board. While this took control away from the students, it did not turn it over to the 'community' in the sense that was meant in the rhetoric of social action. Rather, it was the kind of board needed to satisfy the law foundation that the organization was being properly run. The external members of SLS's board included several lawyers, an accountant and a few community leaders – a board that looked much like the Foundation's own.

The 1998 Annual Report of the Executive Coordinator for Student Legal Services indicated that in that year, approximately 290 students participated in some aspect of the organization's operations which by then consisted almost exclusively of case work and public legal education. Although law reform was still mentioned as a concern of the organization, the report acknowledged that it took a seat well back of the other two areas of activity. All the inner city offices had closed. Only two case offices were being supported – one downtown and one on campus (in a house assigned to the SLS when it was finally dislodged from its space in the law school so the space could be renovated to accommodate the Decore Centre.) Students continued to drop-in at various inner-city agencies on a weekly or bi-weekly basis to answer questions and provide advice[119] but the priorities of SLS students were clear. Most important was getting their degrees; second was getting practical experience in handling files or synthesizing the law. After the James Report, changing the world began to drop to a distant third priority for students, and then out of sight.

Public legal education activities followed students' changing interests. Where once they were simple, immediate, effective interactions between students and activists, community members, transient youth, or aroused interest groups on matters of keen importance, PLE became standardized, efficient, remote, impersonal tracts of information on the law and legal system as students saw it. Before SLS's educational activities passed through this transformation, they enjoyed a brief period as engaging, interactive, innovative efforts to make meaningful connections between people and their legal system in the pursuit of social justice.

The heritage of SLS's PLE activity has not been entirely lost. In 1974, the Alberta Law Foundation convened a meeting attended by one of SLS's advising lawyers. The foundation was concerned that it was not doing enough to meet its object of "contributing to the legal education and knowledge of the people of Alberta."[120] It invited submissions for projects that fell within that objective. The SLS advisor followed up this offer by convening meetings with various people that she had worked with on the agency's behalf. The group conceived a program that would take the fragments of SLS's experience, combine them with the on-going work of teachers, government agencies, community organizations, and the like, and take public legal education to new heights. It soon became apparent that the new concept was too big to fit within SLS's mandate. Nor could it be accommodated within the realities of a student program or, for that matter, in the Law Centre. Somewhat reluctantly, it was decided to form an independent, non-profit company, the Legal Resource Centre of Alberta Ltd. With funding from the Alberta Law Foundation and the support of the Faculty of Extension of the University of Alberta, the next phase of public legal education in Alberta began. Although the Legal Resource Centre clearly had its roots in the SLS experience and for years continued its tradition of working with the community, the justification for the new organization was the broader need for public legal education, not the more limited legal services concept. As a result, the story of the next phase of PLE in Alberta is beyond the scope of this review.

The model of public legal education practised by SLS in the late sixties and early seventies was an integral part of using legal services in the cause of social justice. If, as community developers espoused, poor people knew what they needed but lacked the resources and environment with which to act,[121] knowledge of law was an empowering resource. PLE was so integrated into the community approach used by SLS that it is hard to distinguish between its community development, social action, law reform, and public legal education activities. Consistent with the American social reform paradigm, SLS involved professional reformers (at least, professionals-in-training) putting their skills and knowledge at the disposal of disadvantaged communities for the purpose of changing their social conditions. The problems of individual poor people were redefined as community problems and then transformed into political issues that sometimes benefited from better knowing and using the law or the skills of those with legal training. The rhetoric of participatory democracy and the rule of law was present, but, during the best years of SLS, it was not so much preached as practised. Students appreciated the importance of process in their community activities and adopted a range of tactics in advancing the community's interests, including, if necessary, strident tactics of advocacy and confrontation. Like most neighbourhood legal services, SLS was not a pure representation of the community action agency model. While it was an independent organization, it was not governed by a board consisting of stakeholders. Nor did it follow the reform paradigm's tendency to work through pilot projects to test its ideas. While it did itself go through a pilot phase, it was not subject to the kind of evaluation that characterized pilots run by governments. During its best years, SLS eschewed anything resembling the kind of scientific management that had become popular at the time. Management by objectives, program budgeting, and impact evaluations were anathema to the kind of responsiveness demanded of community organizing. In the struggle for social justice, success can seldom be reduced to quantitative analysis.

As SLS evolved, it seemed to become increasingly difficult for students to conceive of a form of public legal education that was not grounded in an identifiable area of law and to move beyond their impulse to prepare summaries of the law, whether to be delivered to an audience or committed to publication form. Students seemed to need to affirm their own mastery of a topic before they could consider carrying out any sort of educational activity. This inevitably positioned them as "experts" with knowledge to bestow on a legally ignorant public. Their educational activities became increasingly content-centred rather than learner centred. They resorted to familiar didactic methods for disseminating that content rather than the participatory learning approaches more typical of a community development strategy. As the agency distanced itself from the community, other ways of understanding the educational process became equally remote. Nor could their advisors do much to interfere with this trend. In a student-run and self-motivated organization, students resist taking direction from others. Every new batch of students wants a fresh start at their own projects and a chance to learn their own lessons, not to finish off what someone else has begun nor submit to a process they have not initiated. As the radical form of community service was overtaken by the more conservative service for individuals, innovative forms of engaging people in learning about the law were replaced by an efficient, look-alike, cookie-cutter approach to producing impersonal forms of written materials for consumption by unknown readers. SLS reached a point where it could no longer imagine alternatives.

PEOPLE AND LAW[122]

Although the law student clinic was the main form of neighbourhood clinic to be established in Canada, it was not the only one. Several other independent services also existed, each being unique.[123] People and Law Research Foundation Incorporated[124] was one such example. Its genesis could hardly have been more different than that of SLS. The Toronto service began in 1971 as a *pro bono* branch office of a major downtown Toronto law firm[125] that wanted to supply legal services to low income people on a cost recovery basis.[126] Although sympathetic to the needs of the poor, it was opposed to the creation of the Parkdale Community Legal Service set up by Osgoode Hall which the firm, like the law society at the time, saw as the beginnings of the socialization of the legal profession. The firm set out to show that a commercial law firm could solve the problem of delivering legal services to the poor and that government involvement in this area was not only unnecessary but wasteful. Requiring the branch to operate on a cost-recovery basis was intended to ensure that it was managed economically. Free enterprise would defeat socialism in taking the law to the people. This was not simply a disinterested contest between ideologies; the firm hoped to further its reputation with the public through the favourable publicity the branch would generate and to gain a competitive edge in attracting the brightest law school graduates to the firm for their articles.

The branch was begun with one lawyer, a paralegal assistant and a secretary, the latter two being Portuguese-speaking to help the branch overcome problems in dealing with the predominately Portugese community it was to serve. Staff grew over the next two years to include a second lawyer, an articling student and another Portuguese secretary. Students from the Faculty of Social Work and Faculty of Arts volunteered at the clinic and assisted with community development activities. Branch staff were backed up by members of the firm who were prepared to make their expertise available to the poor.

The branch broke with the conventional wisdom of locating in a prominent storefront in the heart of the community it intended to serve. Instead, it occupied space on the second floor of an office building on the boundary dividing the Portuguese community from a public housing development in the Kensington area of Toronto. It hoped by doing so to be able to serve more than one group and to avoid becoming a 'drop-in' centre. The firm was intent on maintaining the appearance of a law office.[127] This proved to be a serious error. Since it looked like a conventional law office, it was not immediately obvious to the community that the branch was offering a new form of service. This problem was exacerbated by the law society's rule against advertising. While the firm might have got an exemption from the application of this rule, like SLS, it did not want to take the risk of approaching the law society for fear their project would be delayed or even disapproved. To compensate, the branch contacted key leaders in the community, hoping they would spread the word.

Early activities of the branch included the usual referral, advice, and community education activities associated with neighbourhood law offices and were provided for free. If actual assistance was needed, the branch would charge for its services or act under a legal aid certificate. The staff lawyers actively sought cases with particular legal significance but only one "test case" was actually undertaken in the first year, a case involving denial of welfare to an immigrant.[128] Since the branch was expected to generate revenue, it also attempted to develop a commercial and real estate practice. However, the commercial sector rejected the office as not being equipped to deal with their business needs. The failure to establish this financial base was a major factor in the firm's decision to discontinue its sponsorship of the office.

Through its early experiences, the firm identified three needs of the poor that were not being met under the legal aid plan of the day:

- the need for advice,
- the need for preventive law – information on rights and legal pitfalls, and
- the need for law reform – lobbying and presentation of well-prepared briefs.

The firm concluded that these services were best delivered at the community level, not by a law office. Moreover, lawyers were not needed at all for many of the problems of the poor.

> For people on welfare, or unemployment insurance, or workmen's compensation, for people who are immigrants, the law is a central and pervasive aspect of their lives. Ironically, it is these same people who have very little notion of the law and its process. Their ignorance of the law means that they can be and are pushed around by employers, landlords, policemen and bureaucrats. With a minimum of basic information, these situations could be handled by the persons themselves. At present our experience has shown that low-income and immigrant people do not have this basic information.[129]

Although the problems of the poor often did not require the services of a lawyer, they were significant nonetheless.

> In a society structured on a framework of law, it can be disastrous to be ignorant of those basics which it is presumed everyone knows. Laws affect our employment, our shelter, our very liberty.[130]

They might involve a poor person's only source of income, the security of his housing, or a sum of money which for him was of overwhelming significance. Where a person could not deal with a problem without help, members of the community could be trained to provide assistance.[131]

The branch also recognized that the major deficiency of legal aid was that it was designed to meet only the individual's needs, and that it was only the new government-supported services that could afford to concentrate on training community advocates, lobbying, and preventive law activities. Since these activities required community participation and support, the branch came to realize that it, too, would need to focus on its community development activities. Initially staff attempted to interest indigenous community organizations and social agencies in undertaking law reform activities. When efforts failed, staff decided to develop their own community base. This meant establishing a new community organization, the organization that was to become People and Law. This was effected over the period of several months by contacting all the former clients of the branch and the community workers in the area inviting them to meetings. Two committees were eventually established: one Portuguese-speaking and the other English-speaking. The first activities of these committees included producing pamphlets on tenants' rights and immigration law, running a seminar on the Children's Aid Society, organizing a public forum on immigration law, and investigating the feasibility of paralegal training.[132]

It 1973, the firm undertook an assessment of its branch idea and found it wanting. First, the project had not attracted the kind of media attention the firm had expected. Not only did the branch not enhance the public's awareness of its socially responsible parent law firm, but members of the branch's immediate community did not even know about it. The deluge of cases expected at the clinic simply did not happen. Nor did the branch prove to be a way of making the firm's expertise available to the poor.

The expertise of a downtown firm did not match the needs of the poor, and the lawyers in the main office lost interest in the project. Finally, and conclusively, the branch lost far more money than the firm expected and was prepared to sustain. The firm's proposition had been remarkable devoid of any appreciation of the problems of the poor and the form that serving them would need to take, or of any business analysis detailing how the branch was to generate the revenue expected of it. As an exercise in *pro bono* law, the branch had failed to prove the firm's hypothesis. If the office was to continue it would have obtain other funding, adopt a different model, and continue under new leadership. Fortunately, its off-spring, People and Law, had reached the state of maturity that it was prepared to assume responsibility for continuing the branch as a community law centre. The firm provided funding for a short transition period to allow the new organization to get started and make the inevitable application for government funding. Having learned first hand the limits of the judicare model of legal aid and the futility of operating a *pro bono* office on a cost-recovery basis, the firm drew back from its original criticisms and began promoting the need for government supported legal clinics like Parkdale to address the urgent and unmet needs of the poor.[133]

Following on the firm's analysis of the deficiencies in legal aid, People and Law adopted a four-pronged strategy: to provide general legal information to the community, to provide summary advice from its own office, to undertake law reform activities, and to train people working in other information centres to provide legal information in the course of their work. Without the firm's support, the staffing of People and Law decreased to two paraprofessionals forcing the organization to choose between its functions. It decided to place its emphasis on training paralegals and conducting preventative legal education and rather than on provision of direct advice. Where direct service was provided, the policy was to

> give the client an understanding of the legal process he had become involved in and the alternatives available; help the client towards solving his own problem; and as a last resort, endeavour to have the client's problem solved for him.[134]

Not only was this seen as the best allocation of limited resources but as a way of minimizing dependency on the service. The basic concept was to give the client sufficient information to understand and deal with what was happening to him. Since the client would do most of the work on his problem, the office could carry a higher caseload while still maintaining other projects.

The first activity of the new service was to conduct a ten-week evening course in lay advocacy. Prospective students assisted in its planning and development. Topics covered were typical of programs of that sort and included

> general information on the legal system, interviewing techniques, identification of the legal problem, the role of the lawyer, allowable areas of advocacy for the layman, and specific areas of law such as social welfare legislation, landlord and tenant, and family law.[135]

This first course was followed by an advanced program. Participants included police community service officers, staff of community information services, social workers and staff of volunteer and grass roots organizations. Later, People and Law organized seminars on Workmen's Compensation, an intensive four-week training session for group operating a Tenants' Hotline, and a ten-week introductory course for new Canadians. The latter course led to the establishment of a volunteer-based community legal service for the Korean community in Toronto. Ever cautious about creating a dependency on its services, People and Law encouraged those who completed the agency's courses to carry on with their learning through their own study groups. Consideration was given to training people to conduct courses. Cases were also referred to graduates of programs or to the organizations spawned by the courses. With this base of experience in designing and developing training programs, People and Law was successful in obtaining funding from the Department of Justice Canada to research the market for and train paralegals for full-time employment in law-related services. With those funds, it was also able to increase its staff, once again having a lawyer in its complement.[136]

Law reform remained an active concern of People and Law. Formed before the closing of the law firm's branch office, the Welfare Law Reform Committee consisting of representatives of local welfare rights organizations continued to function until 1974 when the reforms it advocated were adopted by the provincial legislature. The Committee developed a brief to the Minister of Social Family Services calling for reforms in the provincial welfare legislation, and research was directed to reform of the maintenance provisions. Later People and Law became involved in problems of illegal evictions of tenants from apartments, launching this initiative with a press release, followed by a series of meetings with legal services offices, tenants groups, the Attorney General's Department and the Law Reform Commission.[137] It also provided help to the Mother Led Union, a group of single mothers on welfare who threatened to abandon their children in the legislature building to make the point that they needed more money and better day care facilities.[138]

A demand for direct service was generated through course work and through media coverage of events. While participants in courses were trained to deal with simple legal problems, the dangers of going beyond their competence was made clear to them. People and Law served its graduates as a back-up service for problems that they could not handle themselves. Rather than seeking to expand the agency to respond to growing demand, People and Law chose to promote the establishment of other services, such as the Tenants Hotline. In these ways, direct service was not ignored but managed.[139]

Organizationally, People and Law stands out from other NLSs, not just in its initial form as a branch office of a law firm, but, more important, once it was incorporated as an independent organization. Its board of directors in 1975 consisted of a broad assortment of stakeholders including representatives of advocacy and service organizations, the public library, churches, the government, universities and colleges, the court as well as the business community. The day-to-day activities of the staff were conducted along the lines of a working collective, with all staff sharing the responsibilities for service, training, and office support. Funding for People and Law came from a variety of sources including the United and Anglican Churches, the Ontario government, the city of Toronto, a private foundation, and the Department of Justice Canada.[140] While the organization considered this diversity to be a strength, in the end none of its funders felt a sufficient degree of affinity with the organization to provide it with stable operating funding and the agency was forced to close.

As a representation of the social reform paradigm, People and Law bore the same commitment to pursuing social justice, to politicizing issues, and engaging people in the resolutions of their problems. It took the form of a social action agency governed by a variety of stakeholders. It did not take on the diversity of activities normally associated with a legal clinic, notably the kind of case load that came to characterize the model. More than other clinics of its day, it took the possibilities of using public legal education seriously enough to make it the central means by which the organization advanced its goals. In summarizing its own services in 1975, People and Law concluded that "no other group has taken on the problem of people's need for legal information and skills in the way that People and Law has, and no other group has had the record of successful projects in areas other than individual service that we have."[141] Whether that is entirely true or not, People and Law was amongst Canada's pioneers in demonstrating that the law could be used in advancing social justice for the poor. People and Law's particular contribution to that endeavour was in exploiting the use intermediaries to increase its impact on disadvantaged and alienated communities. While People and Law itself did not survive, the idea of using intermediaries would become one of the major strategies developed by subsequent public legal education agencies, notably the Legal Resource Centre in Alberta and the Legal Services Society in British Columbia.

THE LEGAL SERVICES MODEL OF PUBLIC LEGAL EDUCATION IN CANADA

Public legal education emerged in the context of radical social change. Law was being given a new role and legal rights were being given new meanings. In the United States, the law was to be not only the bulwark against the unwarranted intrusion of the state into the lives of its citizens, but it became the means of levering social benefits from the state. Rights were transformed into entitlements. In Canada, the transformation fell far short of that mark. Just getting a national legal aid service in place to improve access to procedural justice for the poor seemed to satisfy the conscience of the legal community. Receiving the services of the state would, for the most part, remain a privilege. While student and other innovative legal services made tentative inroads into using the law for social action, their efforts were inevitably limited by the legal context in which they had to operate, the lack of resources available to sustain their activities, and the nature of their interests.

Establishing the beachhead for PLE in Canada was not easy. There was no place for it in the judicare model of legal aid that predominated; PLE's natural home was in community legal services. In Canada, those were confined almost entirely to student clinics with the limitations that entailed. At first, just advocating PLE was a radical and destabilizing act. The sanctity of the law was being threatened by interlopers. But as public legal education came to be practised, early concerns were assuaged. Neither the new community legal services nor their public legal education activities proved nearly as threatening as they promised, at least to the legal community. Students might extend the long arm of the rule of law to a slum landlord, a remote hospital board, or a wayward bureaucrat, but that, after all, was the normal business of lawyers. Although new legal services introduced law students and paralegals into the hierarchy of the profession, their presence did not challenge the fact of that hierarchy but reinforced it. Law students were severely limited in the scope of their activities and were subject to supervision by lawyers. For their part, public legal education programs always made it clear that non-lawyers could only expect to go so far – not even as far as law students - in helping themselves. The public's place in the law was on the periphery. Once it was clear that those demarcations were acceptable to all parties, community legal services and public legal education were accepted into the legal regime in Canada. Funded by federal and provincial departments of justice and provincial law foundations, there was little to fear that these newcomers would turn on the very system that sustained them.

Chapter 6 Notes

[1] Osgoode Hall Law School was involved in legal aid services as long ago as 1949. L. Taman, "Application for Funding to The Council on Legal Education for Professional Responsibility" in F.H. Zemans, ed., *Community Legal Services in Perspective: The Development of Legal Services in Canada*, vol. 1 (Toronto: Osgoode Hall Law School, 1972) 335.

[2] D. Hoehne, *Legal Aid in Canada*, vol. 2 (Lewiston, NY: The Edwin Mellen Press, 1989) at 129-133.

[3] I.B. Cowie, *The Delivery of Legal Aid Services in Canada* (Ottawa: Department of Justice Canada, 1974).

[4] The discussion in this section is drawn chiefly from D. Hoehne, *supra* note 2; A.J. Spence, *Legal Aid: A Facet of Equality before the Law in Alberta* (Master of Laws, University of Alberta, 1973) [unpublished].

[5] *An Act to admit such persons as are poor to sue in forma pauperis*, 7 Henry VII 1495, c.12 [hereinafter in forma pauperis].

[6] As early as 1922, this was captured in the Canadian Bar Association's Canon of Legal Ethics. See D. Hoehne, *supra* note 2 at 21.

[7] A.J. Spence, *supra* note 4 at 13.

[8] D. Hoehne, *supra* note 2 at 23-31.

[9] J. Prud'homme, "Legal Aid Societies" (1924) 2 Can. Bar Rev. 181 at 186 in D. Hoehne, *supra* note 2 at 27.

[10] *Law Society Act*, R.S.O. 1950 c. 200 as amended by *Law Society Amendment Act*, S.O. 1951, c.45.

[11] D. Hoehne, *supra* note 2 at 59 citing the *Law Society Amendment Act supra* note 9..

[12] R.H. Leach, "The Federal Role in the War on Poverty Program" in R.O. Everett, ed., *Anti-Poverty Programs* (Dobbs Ferry: Oceana Publications, Inc., 1966) 18 at 1. M.L. Friedland, *Legal Aid: Working Papers* (Toronto: The Joint Committee on Legal Aid, September 25, 1964), Part III.

[13] M.L. Friedland, *ibid.*. at 24.

[14] H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961) is taken as the crucial text for legal positivism in this thesis.

[15] A. Lawson, *The Ontario Legal Aid Plan* (Toronto: Legal Aid Ontario, 1969).

[16] *The Legal Aid Act*, S. O. 1966 1966, c. 80. R. Penner, *Evolution of Parkdale Community Legal Services, Point St. Charles and Dalhousie Legal Aid Service* (Dalhousie: Dalhousie University, 1977)at 6.

[17] D. Hoehne, *supra* note 2 at 59. See also R. Penner, *ibid.*. at 5.

[18] A. Lawson, *supra* note 15.

[19] A. Lawson, *supra* note 15.

[20] The Legal Aid Committee, *Community Legal Services* (Toronto: The Law Society of Upper Canada, August 1972) at 84.

[21] R. Penner, *supra* note 16at 7.

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[22] *Gideon v Wainwright* [1963] 372 U. S. 335 [hereinafter Gideon].
[23] *The Canadian Bill of Rights*, S.C. 1960 1960, c. 44 s.2c.
[24] *The Canadian Bill of Rights*, *ibid.*. s.5.
[25] See W.S. Tarnopolsky, *The Canadian Bill of Rights*, Second ed. (Toronto: McClelland and Stewart, 1975) at 1-3 for a discussion of the difference between these concepts and that of a right.
[26] W.S. Tarnopolsky, *ibid.* Chapter IV at 117-167.
[27] M. Posluns, "Conflict at Akwesasne" (1971) 47 Can. Welfare 4 at 7.
[28] This discussion continues to draw on D. Hoehne, *supra* note 2.
[29] D. Hoehne, *supra* note 2 at 93 quoting John Diefenbaker.
[30] D. Hoehne, *supra* note 2 at 92 quoting Eldon M. Woolliams.
[31] D. Hoehne, *supra* note 2 at 100 quoting Pierre Trudeau.
[32] See also I.B. Cowie, *supra* note 3.
[33] D. Hoehne, *supra* note 2 at 113 and 124.
[34] R. Penner, *supra* note 16.
[35] D. Hoehne, *supra* note 2 at 123 referencing D.R. Lowry, *Social Justice through Law*, 2nd ed. (Halifax: Faculty of Law, Dalhousie University, 1971).
[36] D. Hoehne, *supra* note 2 at 142.
[37] D. Hoehne, *supra* note 2 at 146.
[38] Quebec signed first in December 1972. D. Hoehne, *supra* note 2 at 153.
[39] D. Hoehne, *supra* note 2 at 153-154.
[40] See J.N. Turner, "Frontiers of Law and Lawyership: Legal Education for the Just Society"" (1968) 1969 Can. Bar J. 7 and Otto Lang quoted in D. Hoehne, *supra* note 2 at 156.
[41] The Nova Scotia legal aid establishment favoured neighbourhood legal services though its rural and junior bars opposed it vehemently. D. Hoehne, *supra* note 2 at 226-229.
[42] P. Goodman, *Growing Up Absurd; Problems of Youth in the Organized System* (New York: Random House, 1960).
[43] See for example, F.H. Zemans, *supra* note 1.
[44] L. Taman, *supra* note 1 at 336.
[45] S. Sawyer, Dreams of Justice: Community Groups, Legal Education and Social Change in British Columbia (M. Ed., University of British Columbia, 1993) [unpublished] at 38-39.
[46] R. Laing & D. Koziak, "The Student Legal Services Project - 1969" (1970) 8 Alta. L.R. 141.
[47] L. Taman, *supra* note 1.
[48] Ontario Legal Aid Plan, *The Law Society of Upper Canada Ontario Legal Aid Plan Annual Report 1971* (Toronto: The Law Society of Upper Canada, 1971).
[49] S. Sawyer, *supra* note 46.
[50] D. Hoehne, *supra* note 2 at 218; Student Legal Services of Edmonton, *Student Legal Services: Continuing to Serve the Community.... On the 15th Anniversary of its Incorporation* (Edmonton: Student, June 1986) at 6; Ontario Legal Aid Plan, *The Law Society of Upper Canada Ontario Legal Aid Plan Annual Report 1970* (Toronto: The Law Society of Upper Canada, 1970) at 9; Ontario Legal Aid Plan, *The Law Society of Upper Canada Ontario Legal Aid Plan Annual Report 1971* (Toronto: The Law Society of Upper Canada, 1971) at 12; Ontario Legal Aid Plan,

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The Law Society of Upper Canada Ontario Legal Aid Plan Annual Report 1972 (Toronto: The Law Society of Upper Canada, 1972) at 16-17.

[51] For conference proceedings see I. Cotler & H. Marx, *The Law and the Poor in Canada* (Montreal: Black Rose Books, 1977).

[52] *Ibid.*. at 7.

[53] *Ibid.*. at 7.

[54] *Ibid.* at 28.

[55] S. Wexler, "Practising Law for Poor People" (1970) 79 Yale L. J. 1049.

[56] *Ibid.*

[57] I. Cotler & H. Marx, *supra* note 52 at 60 quoting Wexler.

[58] I. Cotler & H. Marx, *supra* note 52 at 69 quoting Wexler.

[59] For example, I. Cotler & H. Marx, *supra* note 52 at 66 quoting John Ayotte, Greater Montreal Anti-poverty Co-ordinating Committee and at 137 quoting Marjorie Hartling, Community Representavie, Vancouver.

[60] I. Cotler & H. Marx, *supra* note 52 at 99-112.

[61] I. Cotler & H. Marx, *supra* note 52 at 100-101 quoting Marjorie Hartling from the British Columbia Federation of Citizens Association and Jean Amos, Urban Housing Development.

[62] I. Cotler & H. Marx, *supra* note 52 at 12.

[63] Roland Laing and Donna Koziak credit the programs at Osgoode Hall Law School and the University of British Columbia as providing inspiration for the Edmonton program. R. Laing & D. Koziak, *supra* note 47.

[64] The Legal Resource Centre (later, the Legal Studies Program), Faculty of Extension, University of Alberta was launched from Student Legal Services in 1975. L. Gander, *Legal Resource Centre: An Overview* (Edmonton: Legal Resource Centre, University of Alberta, 1980).

[65] as, for example, the Nova Scotia and Ontario programs were. D. Hoehne, *supra* note 2 and Ontario Legal Aid Plan, *The Law Society of Upper Canada Ontario Legal Aid Plan Annual Report 1971* (Toronto: The Law Society of Upper Canada, 1971) at 12.

[66] Western Canada took an early lead in developing major public legal education programs. This can be attributed in part to the funding that was made available for this activity by the provincial law foundations in British Columbia and Alberta in 1969 and early 1970s. But, in the case of Alberta at least, it was the work of law students that first convinced its law foundation of the value of supporting this type of activity. In Alberta, the base was built through Student Legal Services of Edmonton. British Columbia is more noted for its contributions to the second and third models of public legal education, the people's law school and the legal resource centre models respectively.

[67] Established in 1969, the organization was incorporated as a society under the name "Student Legal Services of Edmonton" in 1971. See Student Legal Services of Edmonton, *supra* note 51.

[68] R. Theobald, *The Challenge of Abundance* (New York: C. N. Potter, 1961); R. Theobald, *Free Men and Free Markets* (New York: Clarkson N. Potter, 1963); R. Theobald & E. Kendall College, Ill.,, *An alternative future for America; essays and speeches* Swallow Press, 1968).

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[69] M. Blondin, Community Funds and Councils of Canada. & M. Conseil des oeuvres, *L'animation sociale* Fédérations et conseils des oeuvres du Canada Conseil canadien du bien-être, 1969).
[70] I. Illich, *Deschooling Society* (New York: Harper & Row, 1970).
[71] P. Freire, *Pedagogy of the oppressed* (New York: Seabury Press, 1970).
[72] This discussion is drawn from M. Mildon, *A Wealth of Voices : the Edmonton Social Planning Council, 1940-1990* (Edmonton: Edmonton Social Planning Council, 1990).
[73] *Ibid.* at 127.
[74] A.J. Spence, *supra* note 4.
[75] Edmonton Social Planning Council, *The Blue Book* (Edmonton: Edmonton Social Planning Council, 1969).
[76] *Criminal Code*, S.C. 1953-54 c. 51 renumbered as s. 175 in R.S.C. 1970. Repealed S.C. 1972 c. 13, s. 12 (1).
[77] M. Mildon, *supra* note 73 at 130.
[78] M. Mildon, *supra* note 73 at 130.
[79] I was a member of that group, a volunteer for the remaining two years of my law school education, one of the students hired for the second summer project, and the chair of the program from 1969-70. I returned to SLS as one of its first staff advisors in 1972, a position I held until I left in 1975 to become the executive director of the Legal Resource Centre of the Faculty of Extension, University of Alberta. My account of the early years of SLS is drawn from these experiences unless otherwise noted.
[80] Student Legal Services of Edmonton, *supra* note 51 at 8-9.
[81] Student Legal Services of Edmonton, *supra* note 51 at 7.
[82] Student Legal Services of Edmonton, *supra* note 51 at 8.
[83] R. Laing & D. Koziak, *supra* note 47 at 141.
[84] For a short time, students also operated out of a site they shared with a service run by medical students which was located a few blocks north of the Brotherhood drop-in. Student Legal Services of Edmonton, *supra* note 51 at 9.
[85] The site was acceptable to native men and alcoholics but not a comfortable place for women, especially single mothers with children.
[86] Student Legal Services of Edmonton, *supra* note 51.
[87] R. Laing & D. Koziak, *supra* note 47 at 142.
[88] Other student clinics, like the Dalhousie Legal Aid Services had some form of endorsement from their law societies. See D. Hoehne, *supra* note 2 at 109.
[89] *Legal Profession Act, 1966*, S.A. 1966 c. 46.
[90] Student Legal Services of Edmonton, *supra* note 51.
[91] R. Laing & D. Koziak, *supra* note 47 at 143.
[92] Reprinted in Student Legal Services of Edmonton, at 14.
[93] Student Legal Services of Edmonton, *supra* note 51 at 15.
[94] Student Legal Services of Edmonton, *supra* note 51 at 25.
[95] Student Legal Services of Edmonton, *supra* note 51 at 49.
[96] The outreach worker was Chester Cunningham who founded Canada's first native courtworker program.

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[97] Student Legal Services of Edmonton, *supra* note at 22.
[98] M. Daly, *The Revolution Game: The Sort, Unhappy Life of the Company of Young Canadians* (Toronto: New Press, 1970) at 64.
[99] *Ibid.*. at 63 quoting a CYC Michael Valpy, information officer for the CYC for a short time.
[100] I. Cotler & H. Marx, *supra* note 52 at 77. The speaker is unidentified in the text, but Jim Robb who was present at the time attributes it to fellow delegate, John Faulkner.
[101] The author's personal recollections.
[102] Student Legal Services of Edmonton, supra note 51 at 18.
[103] R. Laing & D. Koziak, *supra* note 47 at 143.
[104] C. Daniels & R. Christiansen, *Many Laws* (Edmonton: Canindis Foundation, 1970).
[105] Student Legal Services of Edmonton, *supra* note 51 at 42.
[106] Student Legal Services of Edmonton, *supra* note 51 at 39-41 and 65-66.
[107] Student Legal Services of Edmonton, *supra* note 51 at 40 and 41.
[108] See for example, D. Ewart, "Parkdale tenant sues Wynn: is awarded rent reduction" (1972) 1 The Parkdale Tenant 1 republished in F.H. Zemans, *supra* note 1 at 446-447.
[109] Student Legal Services of Edmonton, *supra* note 51 at 27.
[110] In 1975, SLS became involved in working with Citizen Advocacy, a group working with the mentally retarded.Student Legal Services of Edmonton, *supra* note 51 at 34.
[111] Student Legal Services of Edmonton, *supra* note 51 at 36-45.
[112] Student Legal Services of Edmonton, *supra* note 51 at 35.
[113] Student Legal Services of Edmonton, *supra* note 51 at 35-36.
[114] Student Legal Services of Edmonton, *supra* note 51 at 35-36.
[115] Student Legal Services of Edmonton, *supra* note 51 at 45-61.
[116] Alberta Legal Aid Society, *Report of the Recommendations of the Joint Committee of the Legal Aid Society of Alberta on the Future Development of the Alberta Legal Aid Programme* (Edmonton: Legal Aid Society of Alberta, 1975).
[117] Student Legal Services of Edmonton, *supra* note 51 at 33-34, 43 and 49.
[118] In 1977, the Alberta Law Foundation exerted pressure on SLS to get out of the income tax rebating service it was involved in with a credit union In 1978, it urged SLS to hire an office administrator and to set up an advisory committee of lawyers and lay people. . Student Legal Services of Edmonton, *supra* note 51 at 43.
[119] Sarah Heynen, *The Legal Education and Reform Project* (Edmonton: Student Legal Services, 1999).
[120] *The Legal Profession Amendment Act, 1972 (No. 2)*, S.A. 1972 c. 114.
[121] M. Mildon, *supra* note 73 at 126.
[122] H.D. Pitch, "Poverty Law and the Private Law Firm: an Experiment in Judicare" (1974) 22 Chitty's L.J. 60 at 63.
[123] Pointe St. Charles Clinic, Vancouver Community Legal Assistance Society and Calgary Legal Guidance are others.
[124] Although established in 1971, it was not incorporated as a non-profit association until 1973. H.D. Pitch, *supra* note 121 at 63.
[125] The firm was Thomson, Rogers. Pitch attributes the creation of the branch to the combined effect of the American experience in the field of poverty law and the controversy surrounding the

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establishment of the Parkdale Clinic by Osgoode Hall Law School at York University. H.D. Pitch, *supra* note 121 at 60.

[126] H.D. Pitch, *supra* note 121 at 60-61.

[127] H.D. Pitch, *supra* note 121 at 61.

[128] H.D. Pitch, *supra* note 121 at 62.

[129] People and Law Research Foundation Incorporated, *A Description* (Toronto: People and Law Research Foundation Incorporated, 1975) at 5.

[130] People and Law Research Foundation Incorporated, *ibid.* at 6.

[131] H.D. Pitch, *supra* note 121 at 62.

[132] H.D. Pitch, *supra* note 121.

[133] H.D. Pitch, *supra* note 121.

[134] People and Law Research Foundation Incorporated, *supra* note 128 at 7.

[135] People and Law Research Foundation Incorporated, *supra* note 128 at 9.

[136] People and Law Research Foundation Incorporated, *supra* note 128.

[137] People and Law Research Foundation Incorporated, *supra* note 128.

[138] C. Hawkes, "Beware the Mother Led Union" (1975) 88 McLean's .

[139] People and Law Research Foundation Incorporated, *supra* note 128.

[140] People and Law Research Foundation Incorporated, *supra* note 128.

[141] People and Law Research Foundation Incorporated, *supra* note 128 at 16.

Chapter 7 – The Radical Promise of Public Legal Education in Canada

The efforts of the sixties to eradicate poverty failed. Both Canada and the United States continue to experience shameful levels of poverty amid conditions of plenty. Indeed in Canada, the gap between the rich and the poor continues to grow with the richest 10% of families with children under 18 making 314 times more than the poorest 10% of families.[1] Not only are the rich getting richer and the poor getting poorer, but more people are sliding into poverty as the middle class shrinks.[2] As Armine Yalnizyan says, "We are super-valuing a few, and devaluing the many."[3]

Over the past thirty years, anti-poverty activists have learned a great deal about how tough an adversary they have and how hard it is to disarm poverty's allies. Certainly, the leaders of the War on Poverty were naïve if they believed their own rhetoric. They underestimated the power of dominant political and economic forces and the effectiveness of the self-interested efforts of the 'haves' and, particularly, the 'have mosts' in maintaining, if not improving, their own status. Those who have power will share it only grudgingly and certainly not to the extent that there is any real intrusion in their own interests. The ground that has been gained on behalf of the disadvantaged is slowly being lost in an increasingly blatant backlash. Attacks on 'political correctness' are legitimizing sexism, racism, homophobia and other forms of hatred in the name of freedom of thought and expression.

Since the 1960s, public attention has increasingly being paid to economic matters. Issues like free trade, federal and provincial deficits, and the performance of retirement savings plans and mutual funds have made the economy matters of everyday concern to Canadians. Public exposure of such issues makes it abundantly clear that explicit policy decisions made by governments significantly affect the course of the economy. In the sixties full employment was seen as a reasonable economic policy; now governments maintain that at least a minimum level of unemployment is needed to keep the cost of labour down. Keeping the cost of labour down achieves several desired results including making businesses competitive and controlling rates of inflation. Trading unemployment off against profit margins and rates of inflation, trading the social safety net off in the interests of lowering deficits or expanding free trade, and trading poverty off against the accumulation of wealth through interest rates and taxation policies, effectively determine who will suffer economically in this country so others can benefit. Poverty is a systemic, not an individual problem.

If poverty is not the consequence of the ineffective efforts of hapless individuals to qualify themselves for work, then the popular strategy of providing educational upgrading, training and retraining programs for the poor can only work around the margins of the problem. At best, such programs might reduce an individual's risk of being the unlucky victim of the economy but they do little to affect the overall rate of poverty. In today's economy, if one family manages to lift itself out of poverty, at least one other family takes its place. Equalizing the opportunity to participate in the workforce equalizes the opportunity to be excluded from the economy. Other strategies, like improving the social safety net, moderate the severity of the consequences of poverty but do not fundamentally alter the dependency of our economic system on unemployment and the poverty it entails.

If poverty is a systemic problem, then altering its harshness and pervasiveness is a matter of political will. Since poverty in Canada is getting worse, Canadians are either not aware of the magnitude of the problem or do not possess the will, the expertise, or the confidence to address it. It is quite possible that until the 1999 release of the Centre for Social Justice's report on *The Growing Gap*,[4] Canadians were unaware of the dramatic "free fall into destitution"[5] of Canada's poorest families caused by cut backs in transfer payments, drastic changes to the country's unemployment insurance program, and the repeal of the Canada Assistance Plan. Canadians may also be confused about the country's capacity to deal with its poverty. Ideological preoccupation with eliminating government deficits has precluded any real discussion of the country's financial situation and its options.

Just as poverty is often hidden, so is wealth. Since the government has stopped collecting and publishing information on the wealth of Canadians, little can be known about its concentration. Not all Canadians have been tightening their belts as the country has punished itself for the supposed excesses of the 1970s. Between 1989 and 1996, the number of millionaires tripled and that number is expected to triple again by 2005.[6] If the spread in incomes is as great as the Centre for Social Justice suggests, differences in wealth are likely to match it. Average Canadians are not wealthy. For the most part, the plight of the middle class has been to slide downward and toward poverty. It now takes two incomes to support middle class family life where once it took one. Left with only their personal situations as a reference for the country's capacity to cope with its poverty, Canadians are likely to see the prospects as bleak. Even though Canadians might wish for a stronger safety net for themselves, their experiences suggest that the country can not afford it. Since current tax policies leave the weakened middle class bearing the costs of social benefits, it is unlikely that they will be the source of the political will necessary to attack poverty. The growing numbers of the rich are unlikely to take on the problems of poverty against their own self interest especially since many of them are apt to see their own positions in the country's income hierarchy as precarious.

Canadians have been told by their leaders that there are no viable alternatives to the drastic reduction in the country's social spending. They have also been told that what they want most is tax relief. They have been made to believe that only by giving in to the Juggernaut of free enterprise can the country be saved. In the 1990s Canadians responded to the urgings of David Osborne and Ted Gaebler to "reinvent government" in the image of the business corporation.[7] The effects of those efforts are in evidence in the sizes of classes in schools and line ups for hospital beds across the country, let alone on the faces of the nation's poor. The first step in addressing poverty is to break the spell of hopelessness that shrouds the country and convince Canadians that they do have choices, that their lives are not driven by some remote and relentless imperative, like globilization. A good place to start is to show that the distribution of the country's wealth is unfair for the average Canadian, let alone the poor—a report from Statistics Canada due in the year 2000 will tell that story. Once it becomes blatantly obvious who is really benefiting from government policies it may be possible to start the long, slow process of rebuilding the country's social infrastructure. Canadians must reject being cast merely as consumers of government services and get back to being citizens. They must reclaim government as an agent of the collective good and as a check on the excesses and abuses of capitalism and the extreme individualism it promotes. They must get back to the task of creating the kind of civil society they want to enjoy. Canadians must address afresh their commitment to social justice and rearticulate that commitment in terms that suit today's realities, not those of the sixties.

THE ROLE OF LAW IN THE STRUGGLE FOR SOCIAL JUSTICE

Does this mean that the law and legal services are irrelevant to the struggle against poverty and injustice? It is easy, if cynical, to downplay the effects law can have in ameliorating some of the particular consequences of poverty for specific individuals and the gains that have been made in the courts and legislatures. It is true that victories in the courts can be tenuous, isolated by subsequent decisions or overturned by legislative action. But, on a case by case basis, countless poor and disadvantaged Canadians experience a little piece of justice thanks to the work of legal services and legal aid lawyers across the country in enforcing their rights. Even a quick reading of an issue of *Community Matters*,[8] the newsletter produced by the Legal Services Society of British Columbia, shows the highly developed state of the practice of poverty law in that jurisdiction. To write off this accomplishment is to devalue the progress that has been made in extending rights to the poor. As race theorists have pointed out, disparaging rights is the privilege of those who have them; in a liberal society, those without rights are doomed to live on the wrong side of the tracks, impoverished in body and soul, and cut off from the levers of power.[9]

While poverty was not eliminated through efforts of reformers during the 1960s and 1970s, significant progress was made in improving the conditions of Canada's poor and in changing the political and legal complexion of the country. Recent set backs to the country's social safety net need only be that – setbacks. The War against Poverty need not be lost, nor the Just Society beyond reach. Set-backs invite reflection on what went wrong, certainly, but also what went right. With twenty years of experience, the legal services movement is ripe for such reflection. It is timely to take stock of its accomplishments and disappointments. Undertaking that job fully is well beyond the scope of this thesis. The question posed here is more modest: in the quest for social justice, what were the expectations for public legal education and what can be learned from its first few years as part of the attack on poverty?

In the late 1960s and early 1970s, Canadian activists adopted a version of a new paradigm for social reform that came into vogue in the United States. Community-based organizations sprang up across the country, sometimes organized along geographic lines, sometimes on the basis of cultural, gender, economic, or other special interest. Their purpose was to provide a new form of input into the resolution of public issues so as to promote a more just society. The legal community responded to the call for justice by creating a nation-wide legal aid program to ensure that the poor could have their day in court on serious legal matters. While the establishment of judicare services across the country has hardly transformed the legal system, it has fundamentally altered the prospects of a court appearance for many of the country's poor.

Meanwhile, in law schools across the country, a new experiment began. The resources of law students were made available to the poor to attempt to remedy such wrongs as were not covered by legal aid. In these programs, students helped to form or worked in conjunction with community-based organizations to tackle the problems of the poor not just as individuals but as a class. Working together, they broke new ground in using the law on behalf of the poor and disadvantaged. Many of the initiatives of that period have borne fruit. Native self-government, social housing, community economic development initiatives, shelters for battered women, and a host of other responses to the conditions of the poor or disadvantaged benefited from the support and assistance of members of the legal community. Legislative reforms – changes to the Criminal Code, divorce laws, corrections law, to say nothing of the later entrenchment of the *Charter of Rights* – brought on by the mood of the times, also contributed to significantly altering Canada's legal landscape.

Part of the new experiment in legal services was to test the use of public legal education strategies on behalf of the poor. As with direct legal services, PLE can take credit for helping thousands of Canadians avoid legal entanglements or achieve better resolutions to their problems through the use of the law. In its best moments, public legal education also helps empower people to effect changes in their social conditions. While more radical forms of PLE may have been the exception more than the rule, these forms of public legal education were practised by early clinical programs and continue to be supported by some PLE and special interest organizations across the country today.[10] Progress in social reform is slow and discouraging, at the mercy of those with power. Credit must be given to those who have engaged in or supported this most difficult kind of work.

While law alone can not eliminate the causes of poverty and other forms of disadvantage, it can play a role in achieving moments of justice for some individuals. In partnership with other agencies, it has also been useful in advancing the interests of disadvantaged groups. Legal strategies have been used to expose the presence of poverty and social injustice, the conditions of the poor and disadvantaged, the consequences of their marginalization, and the need for social and legal reform. Since the sixties, a key weapon has been added to the arsenal of the lawyer, the *Canadian Charter of Rights and Freedoms* which has already been used to establish an "equality" benchmark. In partnership with equality seekers, lawyers play a crucial role in defending this benchmark and, in the process, containing the tyranny of the majority. Legal services have also been used to help with community organizing, development, and empowerment of the poor and disadvantaged. Coupled with media coverage, legal action has been a powerful device for both educating the public and generating the political will needed to address specific causes of injustice.

Important as these accomplishments are, they clearly fall short of the revolutionary rhetoric that announced the War on Poverty and its legal services. Though lawyers and legal theorists have gained a much deeper understanding of how to use law to achieve social justice, the advances have been modest in terms of fighting poverty. They are recounted defensively, almost apologetically, as if to plead for recognition of the good intentions that accompanied them and to cover the guilt for not having done more. And with good cause. While legal professionals played the key role in advancing the legal interests of the poor, they played an equally decisive role in limiting the scope and impact their legal services would have. Whether through funding, professional prerogatives, legislative provisions, or personal priorities, clear lines were drawn as to where the profession's commitment ended, how much change in the *status quo* it would permit, and what types of change it would tolerate. For their part, legal activists have learned to observe those lines for fear of becoming marginalized and ineffective, or worse, punished. In part to compensate, they have used the tools of their trade as competently and as professionally as possible, in the hope that their means will legitimize their ends. The limiting influences of their profession continue to challenge legal activists as they attempt to move their agendas forward.

The question lingers, can more be done? An analysis of the application of the new paradigm of social reform in the context of legal services suggests that both direct legal assistance and public legal education evolved to the extent possible under the concept of law that dominated their practice. An examination of that concept reveals fundamental contradictions between it and the radical promise of PLE. The concept of law that has produced and maintained injustice will not suffice to eliminate it. Only by overcoming those limiting contradictions can PLE, or the radical legal project more generally, move forward in its pursuit of social justice.

THE CENTRAL CONTRADICTION OF PUBLIC LEGAL EDUCATION

In adopting the new paradigm of social reform, legal activists made some crucial alterations that rendered the model ineffectual in achieving their ultimate goal of social justice. Fundamental to the new approach to social reform was the active involvement of the poor in decisions affecting their lives. Critical as this seemed to be to the antipoverty strategy, lawyers never fully bought into that notion, and in particular, rejected it as having any place in governing their services. For them, public participation in the law was an oxymoron, a denial of the very essence of law. They could not conceive of a form of law or lawyering that was based on anything other than the traditional monopoly of lawyers, the highly structured form of their practice, and the sanctity of the lawyer/client relationship. There was no room in that understanding for the kind of community control espoused by the community action model of social action. Locked in their own understanding of law, their imaginations were seized. They could politicize law but not lawyering. After all, practicing law for the poor required no particular ideological commitment; it required only legal competency. As with lawyering, the processes of the legal system were neutral and unproblematic, except as to administrative details, like cost and delays. If legal arguments were properly put, courts could be counted on to eventually see the merits of the claims of the poor. It followed that if the legal problems of the poor were to be taken seriously, they needed the attention of properly trained lawyers. The best interests of the poor dictated that the institution of law remain firmly in the grip of its elite. There was no room for the public in its inner sanctum. Law in its various manifestations was far too complex for the non-lawyer; it remained the property of a specially trained cadre of professionals. That line of logic had the effect of insulating the legal *status quo* from the processes of the revolution. In the law offices and courtrooms of the nation, 'power to the people' could be only disruptive, not transformative.

That view of their role has exposed radical lawyers to criticism for perpetuating the mystique of law, for establishing and maintaining a differential in power between themselves and their clients, and for promoting the hegemony of legal knowledge at the cost of other ways of knowing. Maintaining their traditional role has also exposed lawyers to the accusation of practicing the alchemy of turning social problems into legal problems as if legal solutions will become social solutions. Critics have challenged radical lawyers to attend to the obvious contradiction between their espoused aim of empowering their clients and their own behaviour in practising law. Valid as these insights may be, they have the tendency to blame lawyers at a personal level for their shoddy behaviour rather than to shed light on the underlying reasons for that behaviour. Their failings are not personal shortcomings but rather the manifestations of trained incompetence. The better radical lawyers become at lawyering, the more they undermine their own radicalism. The reason for this irony lies in the concept of law instilled in them by law schools and reinforced by the culture, traditions, and practices of the profession. In defending their turf against intrusion by non-lawyers, lawyers hide from their own view as well as from the public an insidious factor that continues to undermine the radical legal project – the very notion of law on which legal services are predicated. That notion contains within it two barriers to addressing issues of social justice. To move forward with the radical legal project, and particularly to realize the radical promise of public legal education, the nature of law and the relationship of the public to the institution of law must be problematized.

The western understanding of law, including its radical form, is positivist. H.L.A. Hart's articulation of that understanding in *The Concept of Law*[11] is particularly instructive. Not only was Hart's version contemporaneous with the emergence of PLE in the 1960s, but his analysis points directly to issues that PLE must address. According to Hart's version of legal positivism, law is an objectively determinable body of knowledge. Issues of law are separate from those of morality and therefore of justice. Law is the proper province of lawyers, morality the concern of individuals. It is Hart's contention that this is the best way of preserving the clear sightedness needed to address abuse of power by officials and of ensuring that issues of morality do not become oversimplified. A person must always reference something outside the official system in determining whether or not to obey the law and to submit to punishment for disobeying it. Lawyers like other individuals are expected to criticize the law with respect to its fairness in both substance and in application, but that criticism does not impugn the validity of the law itself. Having rendered law a discrete body of knowledge, legal positivism justifies the need for an elite that possesses the keys to understanding that knowledge and tends to what positivism sees as the technical workings of the law. Both the separation of law and morality and the reduction of law to a technical body of knowledge impose constraints on public legal education. The latter constraint will be addressed first.

Since law is defined in purely technical terms, it follows that there is little need or place for public involvement in its machinations. Hart elaborates this proposition by classifying laws according to two types: primary rules, – those myriad rules that guide behaviour, and about which ignorance is no excuse; and secondary rules – the rules about how law works and about which only the legal elite were knowledgeable. All that positivism requires of the public is passive acquiescence in the workings of its legal system; the real work of the law is entrusted to its elite. To the extent that public legal education is called for, its role is to ensure that the public knows the primary rules of society. In the context of legal services for the poor, the job of PLE became making sure that the poor knew the rules that applied in their situations. Confining PLE to primary rules and colluding in promoting the passive role of the public in the legal system while leaving the secondary rules to the active management of an elite had the effect of trivializing public legal education in the context of the neighbourhood law office. While it was conceded that PLE would be helpful in preventing or treating the minor legal aches and pains of the poor, the real work of NLSs resided in engaging the secondary rules on behalf of clients.

A by-product of a positivist approach to public legal education is its effect in promoting law's function in maintaining peace and order in society. The better people know and understand the primary rules, the better social life runs. That makes it easy for PLE to take the next step and teach the virtues of the rule of law in a democracy. Although the radical legal project failed to make room for participatory democracy in its own processes, lawyers related well to the sixties talk of rejuvenating democracy. Law is an essential aspect of any type of democracy – representative, responsible, or participatory. It is not surprising that public legal education for the poor led easily to education on the rule of law and its role in maintaining a democratic society.

The primary rules of legal positivism do not direct attention to the impact of law on social relations, how laws come to be what they are, or the forces that sustain their legitimacy. Public legal education in the positivist sense does not elucidate the role of law in maintaining the status quo and provides no method for exposing or challenging the values and beliefs of a society. Legal positivism serves to identify what the law is, but offers little help in critically analyzing it. Yet these are precisely the kinds of issues that PLE must address if it is to promote social justice. By focusing the learner's attention on legal rules, PLE in the positivist tradition not only stops short of facilitating the kind of education needed for the radical legal project; it actually delegitimizes the kind of inquiry required to promote social justice. Whatever that more critical education might be, in a regime grounded in legal positivism, it is not legal education and not the proper subject of a PLE program. By taking steps to reform the law, to extend legal services to the poor, and to demystify the law, and by joining in the rhetoric of democratic regeneration, lawyers created the appearance of institutional renewal while at the same time successfully fending off any efforts to transform the legal system more fundamentally. In practicing forms of public legal education that relied on the same positivist notion of law, PLE became coopted into protecting the legal institution from analysis, criticism, and reform.

Legal positivism causes a second, equally fundamental problem for the radical legal project. In separating law from morality and politics, legal positivism separates law and justice. Although Hart discusses a number of aspects of the relationship between law and morality, his chief concern is with distinguishing the two concepts. He concedes the importance to the stability of the legal system of a high degree of congruence between law and morality but provides only a rudimentary treatment of what that might entail. He defers to the field of moral philosophy for a deeper consideration of the issues. In giving only passing reference to the importance of public support for the moral basis of a legal system, Hart ignores the very real problems of maintaining public consensus on this matter in a pluralistic society. Nor does his conception direct attention to the need to train lawyers to be moral critics of the law; the lawyer's job is reduced to determining and applying the law. Lawyers like other members of society are expected to criticize the fairness of the law, but since this criticism does not go to the validity of the law, as a practical matter such reflection is the exception rather than the rule. Yet that was exactly what the radical legal project called for. Radical lawyers both exposed law as being biased in substance and in effect, and set about using law for clearly political purposes – the pursuit of social justice. From the point of view of radical lawyers, the practice of law was a deeply moral exercise. Although that put them in conflict with the traditions of legal positivism, lawyers did not have an alternative concept of law nor an understanding of legal practice to match their radical insights. While lawyers might from time to time break with tradition in some isolated way, they did not entirely abandon legal positivism. For the most part, they still believed that legal knowledge was to be found in the books and actions of legal officials and could only be mastered through the rigours of formal legal training. In retaining that positivist role as the keepers of the law, lawyers found themselves also responsible for the moral content and consequences of the law. Theirs was a professional, not just a personal, responsibility for attending to the injustice that law might perpetuate – a role for which they were not only untrained but for which they may have been rendered particularly ill-suited by their training. Hans Mohr has argued that "one of the most important factors in legal training at the law school is to replace indigenous moral responses by legal ones."[12] How then were lawyers and, for that matter, judges to recover their moral sensibilities if they remained in the grip of a positivist understanding of law?

Since public legal education was shaped in this context, it mirrored this view of the relationship between law and morality. The body of knowledge that would be taught was the law as understood by officials of the legal system. Moral indignation with respect to those laws might be invoked in the course of educational activities, but there is little evidence to suggest that any rigorous or systematic method was taught for analyzing the moral dimension of those laws. In the context of the War on

Poverty, it would be reasonable to have expected that some method would have been developed and promoted for analyzing at least the economic and political justice of laws. In the context of a positivist understanding of law, that expectation would not be supported.

At a practical level, the split personality of the poverty lawyer caused problems for public legal education. On the one hand radical lawyers denounced law; on the other hand they practiced it in largely conventional ways. Was the job of PLE to broadcast law's failings or to support the work of the NLS's legal staff? The answer fell into place quickly. For the most part, the case work approach dominated the practices of the NLSs, – after all, that was what lawyers did. Mastering the technical problems of applying the law on behalf of the poor was an absorbing challenge. Focused on their traditional roles, lawyers favoured forms of PLE that legitimized those roles. PLE was to perform a sort of triage function, sorting out the serious cases that needed to be attended to by lawyers, and working out other ways of handling the more minor ones. This hierarchy of needs was exacerbated by the sense of mission that radical lawyer possessed. Fueled by the newly discovered moral imperative of their work, radical lawyers seemed a cut above their amoral peers. This provoked an arrogance in favour of their work over that of lesser mortals, including those who carried out public legal education. Nor did the strategy of social action fare any better in the contest for dominance. In the law offices of the poor, there was soon little tolerance, let alone support, for the kind of trouble-making that characterized community organizing for social reform. Reform through the courts was more sophisticated, orderly, and less prone to violence, and, it was what lawyers had spent years in law school learning to do and which constituted their unique contribution to the antipoverty campaign. In any event, working with the community better fitted the roles and training of social workers and community developers. It better fitted the context of community action agencies too; they could rise and fall with the changing times or their successes, failures, and especially, their political mistakes, whereas legal services needed to be assured of their continuation. Lurking not too far in the background were the funders that had to be appeased. The traditional *modus operandi* of lawyers was recognizable and reassuring to everyone, including clients. Its form of incremental change was manageable. Should it get beyond acceptable limits, excesses could be corrected through legislation.

In opening the door to certain forms of public legal education – education about the primary rules of society and about the role and rule of law in a democratic society – legal positivism closed the door to others. Revisiting four issues that arose in the first years of PLE suggests how assumptions about the law constrained the possibilities of PLE and how fundamentally rethinking the concept of law might open up new avenues for furthering its radical ambitions.[13]

1. Control of legal services

When neighbourhood legal services were being established in the United States, the issue of control of those services was of paramount importance. The debate crystallized around the need to ensure the independence of a lawyer's professional judgment from interference by government or other interests, including a client's class interests. The Americans fought these battles at the level of the local neighborhood legal service and at the level of the control over the Legal Services Program of the Office of Economic Opportunity. The debates in Canada paralleled those in the United States, but in this country, the issue was joined in a contest between the Department of National Health and Welfare and the Department of Justice Canada over which would control legal aid. It also occurred at the level of student legal aid projects over whose interests would prevail – the students, the law schools, or the clients. In both countries, these debates were almost inevitably resolved in favour of legal autonomy, though it varied as to who within the profession – lawyers, law schools, or law students – would control any particular service. If local control by the profession were not enough, the Department of Justice Canada, often in concert with provincial justice departments and, later, with law foundations oversaw the operation of legal services by controlling their funding.[14] While the arguments of the legal community in these debates are well recorded, there is little indication as to what non-lawyers, particularly the poor, might have thought about them. For the most part, they did not even know that the issue had been raised: debates about control took place almost entirely as an intellectual exercise within the legal and government communities.

Participation of the poor was not completely denied by legal services, just marginalized. The poor were sometimes invited to participate to some extent in decisions affecting services, but which decisions and how the poor were to participate was contentious.[15] Accusations of tokenism met with counter allegations of practicality and efficacy. How many poor people had to be involved in an activity to constitute representation? How many had to be involved in decision-making to constitute control? What type of contribution could the poor really make? Were the poor chiefly resource people bringing their particular expertise to bear on issues? However these questions were resolved from time to time, the traditional hierarchy of the law and the elitism of legal expertise was preserved. Lawyers did not even have to be in the majority to control decisions. Legal positivism had been so firmly implanted in the reform project that the hegemony of the legal profession was ensured. Because PLE was practiced as an aspect of these legal services, by default, it remained under the control of lawyers, law schools, or law students as well. The poor might be consulted with respect to decisions regarding their needs and interests in PLE, but they were not, indeed could not, be given control of the programs that would serve them – their very ignorance disqualified them from making certain kinds of judgments.

Suppose lawyers did not control legal services. What services might the poor offer if they were in charge? What would their priorities be? Would they settle for being cast as passive consumers of the services of lawyers or might they seek some other kind of relationship with the law? Would they settle for a one-way exchange of understandings or would they talk back to the law, perhaps make it listen to their stories, demand that it account for itself, or make fundamental changes to how the law operates? How would the poor balance their need for education about the law against their need for direct legal services or for social action? How might they use the law to effect social justice? What would happen if the poor were wielding the power of the law rather than lawyers? Or is Mohr right when he doubts that that a lay person could resist the temptation to become a sudden expert?[16]

It may seem that there are no answers to these questions, that they are fanciful if not irresponsible. But social action agencies across the country engage lawyers, either as staff or as independent advisors, under precisely these sorts of terms. These agencies determine their legal priorities and make the choices in how best to use the law in the interests of their constituents. Some opt for direct service, others for social change. They vary in the emphasis they place on public legal education. The answers they find to the issues they face need not be uniform to make the point that non-lawyers are in charge of a host of organizations that determine if, when, and how legal resources are to be engaged on their behalf.[17] Nor is this a radical departure from the traditions of legal practice. It is commonplace for lawyers to take direction from their governmental and corporate clients. What was unexpected at the time, perhaps, was that the poor and disadvantaged would become equally well organized and equally self-directed. Whether by virtue of the success of the reform paradigm or the waning interests of professional reformers, the people with the most vested interest in change, the poor and disadvantaged, gradually assumed leadership responsibilities.

2. *The content of PLE programs*

The possibilities for public involvement in public legal education become much more radical once the content of PLE is freed from legal positivism. In taking control of NLSs, lawyers automatically took control over the content of the public legal education offered through those services. It was a given that the kind of law that was the subject of these new services was lawyers' law, so that was what NLSs set about teaching the poor. It is not surprising to find that the content of PLE programs offered through legal services related directly to the type of cases most often presented to the legal clinic. Having established that the purpose of the clinic was to promote access to lawyers' law, programs and materials could be expected to proliferate in the areas where people were experiencing the most practical legal problems – landlord and tenant, welfare rights, divorce, family law, and criminal law.

Given that the role of NLSs was to fight poverty, it is disappointing to find little evidence to suggest that they became involved in education on the underlying causes of poverty, the dynamics of poverty in a community, or the role the law plays in perpetuating inequality. If they existed, resources on these topics or on civil disobedience never gained prominence. Though lawyers helped the poor tackle immediate problems in their neighbourhoods, NLSs did little to promote the sort of consciousness-raising that might turn the poor into the kind of force that would demand more fundamental restructuring of the American economy. In incorporating the moral responsibility for law into their more general responsibility for knowledge about the law, lawyers brought the process of identifying and addressing moral issues within their exclusive purview as well. Apparently the poor were as unable to deal with complex moral issues as complex legal ones. More likely, lawyers themselves did not fully appreciate the moral complexity of their radical stance – poverty and oppression were simply wrong and required little more moral reflection than that.

Under legal positivism there is little room to support the proposition that PLE should teach people how laws are made, how legal principles are distilled from the common law or applied in new cases, the purposes of legal technicalities, the limits of the law, the regulation of discretion, how laws evolve, or the methods of reform. These are matters that fall within positivism's secondary rules: the stuff of formal legal training.

Nor does legal positivism point to the need to teach legal skills. If non-lawyers has little need of statutes, they have little need to learn how to interpret and apply them. If non-lawyers have no need of reading the law, then they have no need for the skills of legal analysis. Legal skills even more than legal knowledge are best left to professionals. But what if it were otherwise? What if the disadvantaged were taught how to do legal research and to explore areas of the law of interest to them? What if PLE recognized uses for these skills other than to carry out formal legal procedures? What if the poor were taught to ask certain kinds of questions about the law, like who benefits and who suffers from a particular law or the way it is applied? What if they were taught to approach the law by asking what it might look like if their needs and interests mattered? What if PLE taught the poor how to represent themselves in policy-making arenas? What if PLE taught the skills needed to make the legal system accountable? What if PLE taught the skills to effect change?

More interesting still, suppose the content of PLE were to shift away from the lawyer's definition of the law to something more inclusive. As Mohr has put it, "there is much more 'law' in the community than our law books tell us. Law in our society has become so institutionalized that we tend only to recognize as law that which is imposed by the State."[18] Suppose NLSs had taken on the mandate of promoting a host of views about the nature and sources of law and had been prepared to entertain a variety of mechanisms for resolving disputes, ascribing or apportioning entitlements, or correcting aberrant behaviour. Suppose instead of the Cahns' more imperialistic challenge of taking the rule of law to wherever judges "frocked and unfrocked hand down the common law of the poor"[19] they had charged NLSs to go out among the people and learn from them what their indigenous laws and problem solving strategies were, more like the early common law judges did in England. How much more empowering to legitimize the ways of the community in solving its problems than foisting the formal legal system on them, a system Mohr suggests was already a "spoiled entity."[20] What if people began talking to each other about what the law meant to them instead of always having law defined in its own terms? What if people started talking about what could be, instead of what was? What if NLSs had brought this richer understanding to bear on formal law? By moving so quickly to control NLSs, lawyers squelched the opportunity for a more diverse and indigenous form of community legal education to take root.

More radical yet, what if PLE reconnected law and morality and took as its content the subject of justice? What if PLE were to engage Canadians in debates about what is fair in social life? What if PLE helped to explicate various concepts of justice and to evoke in Canadians a passionate interest in justice? What impact might that sort of PLE have in eliminating poverty and promoting social justice?

Hypothetical questions may seem annoyingly naïve and tediously unrealistic – the sorts of questions one expects of academics cloistered from the real world. Yet answers to many of these questions can be found in the history of native communities as they have come to question the impact that white man's law has had on their people and culture. Their response began with the seemingly simple complaint that the legal concept of 'guilt' had no equivalent in native languages. Gradually sympathetic judges in northern Canada gave credence to native ways of experiencing life and altered their understanding of their role in applying the law. A lone man who cared passionately about his people taught himself what he needed to know to intervene on their behalf before the courts. But his work did not consist only of explaining the legal system to his people; he insisted on explaining his people to the system. The *Trials of Jennie Morin*,[21] a slide show on the criminal court process from the perspective of a bewildered young native woman, is but one example of what a disaffected segment of the public needed to say back to the law. As the idea of taking action on their legal problems caught on, native people established an innovative court worker service that included lay advocacy, research and reform, public legal education, community development, and innovative alternatives to the legal system. Through these and other services, native people became part of a broader discussion not only about law but about justice. Most recently, the native project to transform its relationship to the law has taken the form of indigenous, community-based sentencing circles which administer a mix of native customs and common sense in dealing with native offenders. The process has not stopped there. Native people continue to press for their own justice system as an aspect of their right to self-government. Throughout this process, native people strained against the edges of legal positivism until cracks began to appear and aboriginal understandings of law began to escape their bonds.

The experiences of native people need not be unique. The experience of other Canadians with law is not homogenous. Classes within society experience law differently; immigrants from diverse legal systems possess a treasury of understandings about law, its sources, agents, powers, and abuses. public legal education that enables this knowledge to be released, shared, and critiqued liberates a powerful force for reforming the institution of law to better suit the demands of justice.

3. *The delivery of PLE programs*

In the sixties, the assumptions underlying PLE were that the poor were ignorant about the law and it was the job of PLE to fill their empty heads with legal facts. Debates about how to do that quickly focused on issues of technique – how best to lay out a pamphlet, whether to use video or drama, where and when to hold a public event, how to match topic and audience. For a time there was even some debate over the appropriateness of producing "glossy" resources for the poor. In the end, efficiency of production, not impact of use prevailed as the measure of a resource's success. The involvement of the poor in developing and delivering those services was seldom taken seriously.

But if the idea of law is released from its positivist restraints, and neither lawyers nor formal law are essential to PLE, then public participation can be taken seriously. Under these conditions, the possibilities become endless. Instead of the process being one of the transmission of information, what if it were a process of discovering latent knowledge? What would PLE look like if the poor were engaged in an educational process that helped them critically examine their social reality and empowered them to create alternatives? What if education enabled them to articulate what they knew viscerally? By taking this issue seriously, PLE is 'on all fours' with the social reform paradigm and can truly put participatory democracy to the test of transforming the legal institution. To do this, PLE must move away from its didactic methods and consider alternatives. Methods of popular education immediately come to mind with their emphasis on reckoning with power relations in society, on valuing life experiences, and on expressing personal truths. With that sort of PLE, perhaps communities could transform "the cultural values and social norms embodied in the law"[22] and bring forth entirely new meanings to the notion of law.

4. *Valuing PLE*

From the beginning, financing PLE activities was an issue for legal services. Any funds that went to support PLE meant less money was available to address the endless supply of personal legal problems brought to clinics by the poor. Since lawyers controlled these services and often the government department and foundations funding them, decisions regarding service priorities were dominated by their legal mind set. Not surprising, lawyers preferred the work that most closely resembled the traditional concept of a lawyer and which most closely fit their legal training. They were most comfortable in dealing with cases and often saw their PLE work as a welcome diversion from the daily, often routine, demands of their practices. Though lip service was paid to the value of PLE, a hierarchy of services was established within the legal services movement, with PLE playing a secondary and supportive role to the main business of slaying dragons. What if the poor controlled the legal services purse strings? What might their priorities be? Would PLE be taken more seriously? Or would the poor conclude as did one disinterested (but not uninterested) participant at a focus group conducted by the Alberta Law Foundation, that neither law reform, legal aid, nor public legal education addressed the most pressing concerns of the community? He, like many others, has turned away from the law in search of other solutions. But suppose instead of looking at the value of PLE as it appears in the shade of legal positivism where it is a faded form of its real self, its measure were taken after it was brought it out into the sunshine where its real value as an agent of social reform could be appreciated. What new allies and beneficiaries might it find? Who out there in the churches, private foundations, even governments and the legal community might welcome another way of thinking about problems that are not being solved with the kinds of thinking that caused them?

Revisiting those four issues of the legal services movement suggests some fruitful areas for further development by PLE. Taking on these issues could lead to a complete rethinking of how social relations in Canada are structured and maintained. It could lead to new analyses of social problems and provoke Cloward's "radical questions" regarding "the nation's economy and social structure, which would signify both a culmination of liberalism and a most important point of departure for radicalism."[23] Is this a form of PLE to which we are ready to committed?

CONCLUSION

The 1960s and early 1970s in Canada were a period of unprecedented social upheaval. A wave of protest swept the country as disaffected youth called into question the values and assumptions of the society they were about to enter. Though a certain amount of rebelliousness is associated with adolescence, Canada like the rest of the western world was experiencing the phenomenon of having the largest cohort of youth ever – the baby boom – in this stage of rebellion at a time when the western world itself was experiencing a crisis of authority.[24] Western democracies seemed to be losing their innocence as the stakes in the contest between democracy and communism reached the point where they were becoming increasingly less defensible and as military defeats and public scandals were shaking people's confidence in the moral superiority of their way of life. In the United States, the hypocrisy of its domestic racism in the wake of the World War II defeat of the Nazis came to legitimize public resistance to immoral government, first with respect to civil rights issues, then to issues of social justice more broadly. Resistance to government authority spread to resistance to other forms of authority – the school, the church, the family, and the law. Virtually every aspect of social and personal affairs became politicized. If a third element were needed to make the situation ripe for massive change, it was that western countries were experiencing unprecedented wealth, a situation that gave them not only more resources to deal with social problems than in the past, but sufficient freedom from worrying about making ends meet to contemplate dealing with those problems.

In interpreting society to its members, social scientists put forth a series of theories and hypotheses as to what was wrong with American society and what needed to be done to restore it to greatness. Together they gave shape to a new paradigm of social reform that mobilized communities to take responsibility for their problems. Social reform was particularly channelled to addressing the problem of poverty – a condition which wealthy industrialized nations no longer needed to tolerate. That reform was actualized through community action agencies formed throughout the country and funded by the federal government. These agencies were charged with effecting a new form of participatory democracy that went outside the usual processes of electoral politics to make social institutions accountable to their constituencies.

Since some of the needs of the poor were legal in nature, they called for a response from the legal community. Conventional forms of legal aid were seen as falling short in meeting those needs so a form of clinic was set up in poor neighbourhoods to enable lawyers to develop expertise in serving the poor. These clinics were to put the law at the disposal of the poor, extending to them the benefits of the rule of law – a sacred feature of modern democracy. Radical lawyers maintained that the law had a differential impact on the lives of the poor than the rich: it actually perpetuated poverty. Radical lawyers took as their greater mission the transformation of the law from a sword that inflicted injustice to a shield against injustice. Instead of trapping people in their poverty, law would eradicate poverty altogether.

In these new law offices of the poor, lawyers continued to practice their trade in conventional ways, but also to conduct 'test cases' challenging or expanding the law as it applied to their clients and to take legal action against those who perpetuated the conditions of the slums. Part of the campaign to take law to the poor was preventive law – a commitment to educate the poor so that they would see that the law could be a positive force in their lives, not just an oppressive one. In carrying out this obligation, legal activists introduced programs for the poor, for the various professionals who served the poor, and for the children of the poor. As part of the radical legal experiment, this preventive law acquired two goals. First, it was to help eliminate poverty and, by extrapolation, other fundamental social inequities. Second, it was to do so by transforming the relationship between the public and the law. These goals have not been met – not by preventive law, not by the larger radical legal project, and not by the entire anti-poverty campaign. The proposition that poverty could, in a few short years, be eliminated as the final step in perfecting the North American way of life was hopelessly naïve and romantic. Nor was preventive law's goal of transforming the relationship between the public and the law realistic. At most, preventive law can be credited with helping to create new relationships between individual poor people and the law, if only by bringing them together for the purpose of preventing or dealing with legal problems. Even that much of a relationship has resulted in concrete benefits accruing to individuals and can not be dismissed as trivial. However, the relationship casts the poor, like other members of society, in the position of consumers of legal services, albeit a repackaged product for distribution to that market. Educational efforts directed at the poor have failed to show the poor how they might take the law into their own hands

A number and variety of organizations in Canada have taken up the challenge of educating the public about the law. Their efforts now dwarf those of the law students and neighbourhood legal services that started this work. No longer confined to the boundaries of poor communities nor the goals of the legal services movement, these new 'sole purpose' public legal education agencies have adopted a range of objectives including preventive law, citizenship development, crime prevention, community development, and social reform. Analysis of these efforts remains to be undertaken to determine the extent to which the original radical goals of PLE are still endorsed, and if so, which of the many issues raised during the first stage of PLE have been addressed. Casual observation suggests that, although key social issues are increasingly being debated in the arena of law, the public is still largely excluded from those debates. The legal system still offers them little voice. While PLE may still seek to engage the public in these debates, it has had, at best, only limited success in realizing that goal.

It has been posited here that the early community legal education and its successor, public legal education, are constrained from realising their radical potential, in part, because of the concept of law they are derived from and perpetuate. Implicit in the PLE project is the belief that the public should have access to the law but does not: that the law is the privileged domain of lawyers, judges, police and others directly involved in its maintenance. While many rationales have been articulated justifying public participation in the law, little work has been done within PLE to examine why that participation does not exist as a matter of course. Simplistic explanations, that the law is too complex or that public participation runs contrary to the vested interests of the legal elite, are not satisfying. A closer examination has suggested a more fundamental impediment: that public participation in the Canadian legal system is inhibited by the very notion of law on which that system is premised. Like its sponsor, poverty law, PLE has taken the basic assumptions of the legal system as a given and has conceived its job as explaining or demystifying this process for the public.

The dominant concept of law in the British tradition is a positivist one that holds that law is a set of objectively determinable rules, the most essential of which are perpetuated through a compact amongst, and need be known only to, a body of 'legal officials.' In this tradition, law and justice need not be and often are not synonymous. It is this notion of the law that prevailed in making critical decisions about legal services for the poor and that PLE continues to be called upon to perpetuate. If this is so, public legal education is located in a fundamental contradiction: it is attempting to do what the western concept of law precludes. As a result, PLE delivers a mixed message: on the one hand PLE urges people to be informed about the law so that they can be empowered to use it. On the other hand, PLE gives people an explanation of law that reinforces its limitations as a rule-bound practice best left to lawyers. PLE provides no insight into how to break out of this trap. It leaves the public occupying its traditional roles of complainant, defendant, juror, plaintiff, and witness. Nor is the public provided with any sense of how the system itself might be open to evolution in ways that enhance public participation or how the revolutionary potential of law that lawyers so glibly tout can actually be realized. The public is taught that they can never really understand the most important features of law: that law is really too complicated and too technical for anyone to understand without acquiring a proper legal education. They are also taught that a lawyer's highest duty is to the law and not to justice. This mixed and confusing message is conveyed through the content of programs and through the treatment given that content. It is achieved by the choice of resource people for PLE activities and by the way decisions about PLE activities are made. Instead of challenging the assumptions embedded in the positivist concept of law, PLE programs have endorsed them. As a result PLE has been neutralized if not turned against its radical purpose.

Since the mid-seventies, public legal education programs have no longer been affiliated exclusively with legal services. Agencies whose sole purpose is public legal education have been set up in almost every jurisdiction in Canada. Yet radical forms of PLE have not become more evident. PLE agencies have tended to shun the role of advocate or community animator. Rather, they have opted for a more neutral role as the provider of information that others can employ in promoting their causes. The extent of this neutrality varies from organization to organization with most PLE groups giving preference to the legal needs of the disadvantaged, whether abused women, immigrants, the disabled, native people, or the poor. The caution of PLE agencies in avoiding advocacy roles derives in part from a genuine desire to avoid being so closely identified with one side of an issue that they cannot serve someone else whose interests may seem inimicable. Their caution derives, too, from the practical problem of maintaining funding for their services. Being identified with a controversial cause can have a serious negative impact on the bottom line.

More fundamental, the conservative nature of PLE sits very comfortably with the concept of law it perpetuates – a positivist notion of law that claims that neutrality is one of its features. The law is simply the law, and it can be taught without regard to its social significance – the very neutrality that radical lawyers were contesting when PLE began. If PLE is to recover its radical edge, it must address this contradiction and claim a role in providing critical analysis and discussion of social issues and in promoting social change. It must not only put more importance on assessing the political, social, and economic implications of the law, but PLE agencies must be proactive in bringing issues of social justice forward and in engaging the public, the legal community, and governments in meaningful discussions of the issues and solutions.

If PLE is to address its more radical purposes, PLE organizations must take their definition of law seriously. They must reject the positivist claim that law is an objective reality. Instead, they must take a position on law as a lived experience, an agent of social policy, and a mirror in which a society is reflected. Public legal education must become imbued with a broader sense of law that captures a wealth of meanings, that locates law in its social context and that links law and justice. PLE programs must draw out the underlying assumptions of laws and expose the benefits and disadvantages they perpetuate. PLE must promote critical analyses of law that tease out its oppressive effects. They must offer opportunities to explore multiple understandings of the concept of justice. In these ways PLE programs can advance the debate over the ends to be sought by our legal institution not only without jeopardizing indigenous moral reasoning but strengthening it. This work is essential to advance a collective understanding of the kind of justice Canadians want for their country.

To do this, PLE organizations must repudiate the view that knowledge of law consists merely in knowing the rules, a technical feat requiring specialized training. If law is not just rules, then legal education can entail the insights of a host of other disciplines, to say nothing of the direct experiences of those whom it serves. Understanding the law from a variety of perspectives can only help the public determine whether this fundamental social institution is achieving their goals. Taking this approach to law undermines the hierarchy of its priesthood and puts the public at the front of the legal enterprise and their knowledge at its centre. Since the law becomes what the people know, its mystique is finally shattered.

This radical form of PLE does not necessarily eliminate the need for lawyers and others in the legal system; they may remain integral to one aspect of a newly conceived justice system. It may be that legal officials will still be needed to manage certain technical aspects of the system. It is also possible that their roles will be transformed. What matters is that their relationship to the public would be fundamentally altered. No longer the priests of a highly stratified secular religion, they will be partners of a legally competent citizenry who share the responsibility for pursuing of justice. The justice process and its 'laws' are laid bare for public scrutiny, its workings are subject to critique from a host of perspectives, and the public takes effective responsibility for the impact of the system. Instead of a legal system that is centred on an elite profession that tends a body of rules, it becomes centred on public processes for pursuing justice.

It is timely for a reassessment of the promise and potential of public legal education to occur. Poverty, especially child poverty, is again appearing on the political agenda. Homelessness has again achieved national notoriety.[25] There is also a new generation of equality seekers fighting the cause of the disadvantaged. Governments and communities are engaged in serious efforts to find alternatives to the legal system for achieving justice. New opportunities are opening up to give PLE more scope and relevancy and new players are available to provide support and suggest direction. The Women's Legal Education and Action Fund's method of "workshopping" cases is a leading example of an innovative way of managing the respective knowledge and interests of stakeholders in a legal action.[26] Since the sixties, critical, feminist, and race theorists have also done much work to expose the limits of the western concept of law and the biases it conceals.[27] Their work provides a wealth of insights for PLE to take out into the community. PLE can teach the analytical techniques for critiquing the law developed by theorists and turn those techniques on itself to expose its own assumptions about the law. In turn, the sheer demand for widespread and varied PLE constitutes a challenge to legal theory. Why is the public not content to leave the law to experts? Why are they excluded from more meaningful participation in the legal enterprise? PLE invites legal theorists to look at law 'as if the public mattered,'[28] to make the law 'citizen-centred.' What new understandings might flow from asking questions about how the public understands law, what the public sees as legal issues, and what public views on those issues might be? By joining the debate about the nature and function of law in contemporary society, PLE practitioners contribute their insights, but more important the public's experiences, to a deeper understanding of the nature of law in contemporary society.

The radical program of public legal education cannot be achieved in isolation. Public legal education must become imbedded in a broader social justice movement to dominate Canadian political, social, and economic discourse. 'Dreams of justice' are the common denominators among equality seekers and their allies. By abandoning legal positivism and its preoccupation with rules, and by taking up the more useful challenge of linking law with morality, public legal education can play a significant role in organizing and supporting self-help organizations to achieve their dreams, in building coalitions between the enemies of injustice, and in making a passion for justice the defining characteristic of Canadians. Then public legal education can claim to be promoting access to justice instead of just access to law.

Chapter 7 Notes

[1] This is in contrast to the top 10% of families making 21 times more than the poorest 10% of families in 1973. A. Yalnizyan, *The Growing Gap: A Report on the Growing Inequality between the Rich and Poor in Canada* (Toronto: The Centre for Social Justice, 1998) at x.

[2] Even to maintain their ground, twice as many families with children under three are in the labour force than one as was the case in 1973. *Ibid.* at xi.

[3] *Ibid.* at ix.

[4] *Ibid.*

[5] *Ibid.* at xi.

[6] *Ibid* at 9.

[7] D. Osborne & T. Gaebler, *Reinventing Government : How the Entrepreneurial Spirit is Transforming the Public Sector* (Reading, MA: Addison-Wesley Pub. Co., 1992).

[8] See for example, Legal Services Society of British Columbia, (1999) 8 Community Law Matters: Poverty Law News for Advocates.

[9] P.J. Williams, *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991).

[10] S. Sawyer, *Dreams of Justice: Community Groups, Legal Education and Social Change in British Columbia* (M. Ed., University of British Columbia, 1993) [unpublished].

[11] H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961).

[12] J.W. Mohr, "The Roles of Interested Parties in Public Legal Education" in F.B. Sussmann & B.W. Morse, eds, *Law and the Citizen: Looking to the 80's* (Ottawa: University of Ottawa Press, 1981) 55 at 60.

[13] In R.A. Macdonald, "Recommisioning Law Reform" (1997) 35 Alta L. Rev. 831, Madonald poses similar questions for revitalizing law reform. He asks how problems are identified, how they are studied, and the form the solution is presented in to show that assumptions about law and the legal system have constrained law reform in Canada and to begin the exploration of alternatives.

[14] In the case of SLS, the debate was somewhat less noble and more quickly resolved in favour of expediency – the service could only likely run if the students were in more or less complete control and could adapt the service from time to time to suit their various needs as students.

[15] I. Cotler & H. Marx, *The Law and the Poor in Canada* (Montreal: Black Rose Books, 1977).

[16] J.W. Mohr, *supra* note 13 at 57.

[17] S. Sawyer, *supra* note 11.

[18] J.W. Mohr, *supra* note 13 at 57.

[19] E.S. Cahn & J.C. Cahn, "The War on Poverty: A Civilian Perspective" (1964) 73 Yale L. J. 1317 at 1334.

[20] J.W. Mohr, *supra* note 13 at 56.

[21] Native Courtworkers and Counselling Association of British Columbia, *The Trials of Jennie Morin* (Vancouver: Native Courtworkers and Counselling Association of British Columbia).

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[22] M. Schuler & S. Kadirgamar-Rajasingham, eds, *Legal Literacy: A Tool for Women's Empowerment* (New York: UNIFEM, 1992) at 23 quoted in S.E. McDonald, *Public Legal Education in Ontario Legal Clinics* (Master of Arts, University of Toronto, 1998) [unpublished] at 41.

[23] M. Harrington, "The Politics of Poverty" in C.I. Waxman, ed., *Poverty: Power and Politics* (New York: Grosset & Dunlop, 1968) 180 at 196.

[24] D. Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996) at 161-184.

[25] J. Taylor, *Homelessness in Edmonton: A Call to Action* (Edmonton: City of Edmonton, May 14, 1999).

[26] S. Razack, *Canadian Feminism and the Law : the Women's Legal Education and Action Fund and the Pursuit of Equality* (Toronto: Second Story Press, 1991).

[27] See for example, A.C. Hutchinson & P. Monahan, "Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought" (1984) 36 Stan. L. Rev. 199; M. Kelman, *A Guide to Critical Legal Studies* (Cambridge, Mass.: Harvard University Press, 1987); M. Tushnet, "Critical Legal Studies: An Introduction to Its Origins and Underpinnings" (1986) J. Legal Educ. 505; D. Cornell, "The Violence of the Masquerade : Law Dressed Up as Justice" (1990) 11 Cardozo Law Review 1047; D. Kennedy, "The Stages in the Decline of the Public-Private Distinction" (1982) 130 University of Pensylvania Law Review 1349; K. Bartlett, "Feminist Legal Methods" (1990) 103 103 Harvard Law Review 829; R. Colker, "Feminist Litigation: An Oxymoron" (1990) 13 Harvard Women's Law Journal 137; and K. Crenshaw, "Toward a Race Conscious Pedagogy in Legal Education" (1992) 11 National Black Law Journal 1. See also R.W. Bauman, *Critical legal studies : a guide to the literature* (Boulder, Colo.: Westview Press, 1996).

[28] Borrowing from the feminist strategy of looking at the law “as if women mattered."

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Appendix I

PUBLIC LEGAL EDUCATION ORGANIZATIONS IN CANADA

Public Legal Information of Newfoundland
PO Box 1064, Station C
5th Floor, Atlantic Building
215 Water Street
St. John's, Newfoundland A1C 5M5
(709)722-2643 phone
(709)722-0054 fax
plian@nf.sympatico.ca

Community Legal Information Association of Prince Edward Island
PO Box 1207
1st Floor, Sullivan Building
16 Fitzroy Street
Charlottetown, Prince Edward Island C1A 7M8
1-800-246-9798 toll free phone
(902)892-0853 phone
(902)368-4096 fax
cliapei@isn.net

Public Legal Education Society of Nova Scotia
911, 6080 Young Street
Halifax, Nova Scotia B3K 5L2
(902)454-2198 phone
(902)455-3105 fax
plens@web.net

Public Legal Education and Information Society of New Brunswick
PO Box 6000
Fredericton, New Brunswick E3B 5H1
(506)453-5369 phone
(506)457-7899 fax
pleis@web.net

Direction des communications Ministre de la justice
1200, route de l'Eglise

Sainte-Foy, Quebec G1V 4M1
(418)644-3947 phone
communications.justice@justice.gouv.qc.ca

Community Legal Education Ontario
Suite 600, 119 Spadina Street
Toronto, Ontario M5V 2L1
(416)408-4420 phone
(416)408-4424
cleo@web.net

Community Legal Education Association (Manitoba)
501, 294 Portage Avenue
Winnipeg, Manitoba R3C 0B9
(204)943-2382 phone
(204)943-3600 fax
info@mb.ca

Public Legal Education Association of Saskatchewan
115, 701 Cynthia Street
Saskatoon, Saskatchewan S7L 6B7
(306)653-1868 phone
(306)653-1869
pleasask@web.net

Public Legal Education Network of Alberta
C/O Legal Studies Program
University Extension Centre
4-36, 8303 – 112 Street
Edmonton, Alberta T6E 1W7
(780)492-5735 phone
(780)492-1857 fax
Plena.info@ualberta.ca

Legal Studies Program
C/O Legal Studies Program
University Extension Centre
4-36, 8303 – 112 Street
Edmonton, Alberta T6E 1W7
(780)492-1621 phone

(780)492-1857 fax
lois.gander@ualberta.ca

The Peoples Law School
150, 900 Howe Street
Vancouver, British Columbia V6Z 2M4
(604)331-5400 phone
(604)331-5401 fax
ghardy@publiclegaled.bc.ca

Legal Services Society
Suite 200, 1140 West Pender Street
Vancouver, British Columbia V6E 4G1
(604)660-4600 phone
(604)660-9579 fax

Legal Services Board
PO Box 1320
Yellowknife, Northwest Territories X1A 2L9
(867)873-7450 phone
(867)873-5320 fax

Yukon Public Legal Education Association
C/O Yukon College
PO Box 2799
Whitehorse, Yukon Y1A 5K4
(867)667-4305 phone
(867)668-5541 fax
sdennehy@yukoncollege.yk.ca